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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Report on the practice of administrative detention, submitted by Mr. Louis Joinet

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I. TERMS OF REFERENCE

1. In its resolution 1985/16 of 11 March 1985, the Commission on Human Rights requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to analyse available information about the practice of administrative detention and to make recommendations on the subject.

2. At the thirty-eighth session of the Sub-Commission, the sessional Working Group on Detention had before it information on administrative detention received from non-governmental organizations in consultative status with the Economic and Social Council (hereinafter referred to as "non-governmental organizations"). According to this information, in various countries, hundreds and, in some cases, thousands of persons and their families were being subjected to detention as an administrative measure, without any arrest warrant, charge or trial by an independent judicial body, and these persons were, often during states of emergency, being held incommunicado for several months, or years, or even indefinitely, without the services of a lawyer or the possibility of exercising their right of defence.

3. The participants in the debate of the Working Group on Detention agreed that a preliminary analysis of problems of administrative detention was necessary. They began to consider various possible definitions and forms of administrative detention, as well as the sources of information that might be used. It was felt that an explanatory paper suggesting what methodology could be used to carry out such a study would be useful and that a member of the Sub-Commission could be appointed for that purpose. The drafting of a working paper was entrusted to Mr. Louis Joinet, who submitted a contribution to a methodological approach regarding administrative detention (E/CN.4/Sub.2/1985/WG.1/WP.5) to the Working Group.

4. In its decision 1985/110 of 29 August 1985, the Sub-Commission requested Mr. Joinet to prepare an explanatory paper suggesting how it might carry out its responsibilities under Commission on Human Rights resolution 1985/16.

5. In accordance with decision 1985/110, Mr. Joinet submitted to the Sub-Commission, at its thirty-ninth session, a paper on this subject (E/CN.4/Sub.2/1987/16). According to the synopsis of material received from non-governmental organizations prepared by the Secretariat, administrative detention was common practice in more than 30 countries, where thousands of persons were said to be held in detention without charge or trial, merely by executive decision, either because they were viewed as a potential threat to national security or public order or because they had asserted their fundamental rights by peaceful means. At the same session, the Sub-Commission adopted resolution 1987/24 of 3 September 1987 in which it requested its rapporteur, to draft a questionnaire and send it to all the Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations concerned with a view to obtaining further information and views relating to the matters dealt with in his explanatory paper, and to present to the Sub-Commission, at its forty-fourth session, a more detailed analysis of the matters dealt with in his explanatory paper, on the basis, inter alia, of the answers to its questionnaire.

6. In its resolution 1988/45 of 8 March 1988, the Commission on Human Rights, confirming the rapporteur's initial inquiries, noted with concern that, in some cases, the administrative detention procedure was subject to

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abuse. Bearing in mind that, in order to prevent any abuse, administrative detention must be applied, particularly with regard to duration, in clearly defined conditions laid down by national laws, in accordance with the rules of international law, the Commission took note of the explanatory paper and invited all Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations concerned to assist the rapporteur in discharging his mandate by forwarding their answers to the questionnaire. The Commission requested the Sub-Commission to consider, as from its fortieth session, the analysis presented by its rapporteur and to make any proposals it deemed necessary on the question to the Commission.

7. At its fortieth session, the Sub-Commission had before it an analysis of the practice of administrative detention prepared by Mr. Joinet on the basis, inter alia, of the answers received to the questionnaires (E/CN.4/Sub.2/1988/12). The Sub-Commission also had before it a synopsis of material received from non-governmental organizations prepared by the Secretariat, confirming that in some countries persons were being subjected to administrative detention without specific charges being brought against them and that some were being held in very arduous conditions far from consistent with the Standard Minimum Rules for the Treatment of Prisoners. The Sub-Commission, by its decision 1988/110 of 1 September 1988, requested the rapporteur to present his report as a matter of priority to the Sub-Commission at its forty-first session.

8. In its resolution 1989/38 of 6 March 1989, the Commission took note of the analysis submitted by the rapporteur to the Sub-Commission. It requested the Sub-Commission to consider, as from its forty-first session, the report submitted by Mr. Joinet and to make any proposals it deemed necessary on the question to the Commission. It also decided to continue its consideration of this question at its forty-sixth session, in 1990, under the agenda item "Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its forty-first session".

II. SOURCES OF INFORMATION

A. Information provided by Governments

9. The questionnaire which the Sub-Commission, by its resolution 1987/24, had requested the rapporteur to prepare was sent on 5 February 1988 to all Governments. Thirty-three Governments communicated information to the rapporteur (see annex I, A).

10. In addition to their replies to the questionnaire, some Governments provided the rapporteur with detailed information concerning their legislation on the subject (see annex I, A).

B. Information from other reliable sources

11. The rapporteur sent questionnaires to the competent United Nations bodies, specialized agencies and regional intergovernmental organizations. Six of these provided information to the rapporteur (see annex I, C, D and E).

12. Ten non-governmental organizations, as well as some organizations not in consultative status with the Economic and Social Council, provided the rapporteur with information and/or communicated relevant documents to him (annex I, F, G).

13. The Rapporteur consulted relevant constitutional, legal and administrative provisions of other States available in the United Nations library in Secretariat reports and especially the information communicated by Governments, United Nations bodies, specialized agencies, regional intergovernmental organizations and non-governmental organizations within the framework of the annual consideration by the Sub-Commission of its agenda item concerning the question of the human rights of persons subjected to any form of detention or imprisonment. The rapporteur also examined the reports of the Working Group on Enforced or Involuntary Disappearances, the reports of the Special Rapporteur on summary or arbitrary executions and of the Special Rapporteur on torture, the reports of the Special Rapporteur on states of emergency and the reports of the Secretary-General on restraints on the use of force by law enforcement officials and military personnel, the fact-finding reports on the human rights situation in certain countries initiated by the Commission on Human Rights (Afghanistan, Chile, Cuba, Cyprus, El Salvador, Guatemala, Haiti, Islamic Republic of Iran, southern Africa), as well as the relevant information contained in the periodic reports submitted to the Human Rights Committee by States parties under the International Covenant on Civil and Political Rights (hereinafter referred to as "the Covenant"), the questions raised by the members of the Committee and the replies to the supplementary reports communicated by States parties on that subject, together with the Committee's general comments on article 9 of the Covenant regarding detention.

14. The annex contains a comparative table of the relevant provisions of the main international instruments concerned, as well as a list of other international instruments of relevance (annex II, A and B).

III. SCOPE OF THE STUDY

15. In keeping with the guidelines laid down by the Sub-Commission, this report deals with method as much as with substance. In other words, it offers the outline of and guidelines for what might become an annual report on this subject, as suggested in conclusion. Hence the prominence given to certain features, chief among which are:

(a) A rigorous choice of criteria for distinguishing administrative detention from all other types;

(b) An attempt at concept-shaping in the terminology selected; this should avoid arguments about the legal designation of a given category of detention and facilitate the comparative analysis of different legal systems;

(c) The priority given to a typological study of the practices and actual situations encountered in different countries, in order to identify the positive and negative points they have in common, both in legal terms and in the evaluation of specific situations;

(d) The overall priority given to the analysis of abuses, i.e. the conduct and subterfuges to which all too many Governments resort in order to circumvent the powers of the judicial authorities and divert administrative detention from its strict purpose.

16. Determining the scope of the study prompts four major observations: how widespread resort to administrative detention is; the diversity of the legal designations employed; the need to opt for a rigorous description; and the diversity of situations giving rise to administrative detention measures.

A. Extent of resort to administrative detention

1. In law

17. Contrary to what one might suppose, administrative detention is not banned on principle under international rules, which confine themselves to establishing limits and safeguards. Virtually all countries, including those which regard themselves as being among the most democratic, provide in their legislation for detention where the power of decision lies with the administrative authority alone as well as detention ordered and supervised exclusively by the courts.

18. Whether this is deplorable or not - the author of this report believes it is - it is thus not the principle of administrative detention that is at issue but rather, on the one hand, the conditions in which it is applied and the safeguards provided by law, and, on the other hand, the conformity of those safeguards to international standards - provided always that those standards are adequate, a matter which will have to be addressed.

2. In practice, and the danger of misuse

19. Given a type of detention carrying diminished safeguards, and hence "at risk", Governments might at the very least be expected to use it only in truly exceptional cases, while judicial detention remained the rule. In all too many countries, on the contrary, the exception is tending to become the rule, not only when states of emergency are declared but also under "internal security" or "State security" laws which remain permanently in force.

20. Thus, this form of detention is becoming a means of halting criticism and protest, eliminating political opposition or peoples seeking legitimately to exercise their right to self-determination or wishing to throw off the yoke of apartheid, even if there has been some recent progress in this area. For example, one country whose authorities make a practice of conducting mass arrests of members of one community whom they regard as potential militants (even if no charge against them can be sustained) has passed a law extending from six months to one year the period during which such persons can be administratively detained. To take another example: in one country, 106 people were detained on orders from the Ministry of the Interior in October 1987; 32 were still in detention in July 1988. According to some persons concerned with the protection of human rights, the internal security act was applied abusively in that country and the Government exploited racial tension to stifle criticism and distract attention from domestic political problems.

B. Diversity of legal designations encountered

21. The terms used in the international instruments and national laws are: "detention", "administrative detention", "detention without charge or trial", "administrative internment", "rétention administrative", "mise aux arrêts", "house arrest", "attachment", "ministerial detention", "pre-trial detention",

"preventive detention" and "a disposición del poder ejecutivo nacional". Despite the alternate use, in French, of the terms "détention administrative" (Commission on Human Rights resolutions 1985/1, 1986/1, 1987/2, 1988/1 and 1989/2A on the question of the violation of human rights in the occupied Arab territories, including Palestine) and "internement administratif" (Sub-Commission resolutions 1987/24, 1988/10 and 1988/45; Commission resolution 1989/38), preference will be given in the French text of this study to the term "détention administrative". The adoption of this terminology, which corresponds to the English term "administrative detention" and to the Spanish term "detención administrativa", has the advantage of avoiding any conflict of interpretation as regards the scope of the relevant provisions of the international rules adopted, notably by the United Nations, to protect the rights of persons subjected to any form of detention, in particular the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereinafter referred to as the "Body of Principles").

C. Need to opt for a rigorous definition

22. A rigorous definition will permit a clear distinction to be drawn between administrative detention, the only kind of concern to this study, and judicial detention in all its forms for there is no other category: detention is either administrative or judicial. For the purposes of this study, therefore, detention is considered as "administrative detention" if, de jure and/or de facto, it has been ordered by the executive alone and the power of decision rests solely with the administrative authority, even if a remedy a posteriori does exist in the courts. The courts are then responsible only for considering the lawfulness of this decision and/or its proper enforcement, but not for taking the decision itself.

23. This definition has prompted the exclusion from this study of:

(a) Situations involving irregular judicial detention, not administrative detention in the strict sense: in other words, situations where delay in the preferment of a charge or excessive length of detention before trial results from irregularities committed in the course of judicial procedure;

(b) Detention in custody, whereby people are held in police premises for the purposes of judicial enquiry, as long as custody is ordered by and effected under the responsibility of a judicial authority. Such situations are regarded as falling within the scope of the study, however, when the supervision of the courts is so diminished de jure or de facto that the detention approaches administrative detention in its effects.

D. Diversity of situations giving rise to administrative detention

24. From the point of view of typology and the purposes of administrative detention, the inquiries undertaken suggest five cases in which such detention is found to be used significantly. These will be addressed in turn. They are: (a) situations threatening public order and State security, notably during crises; (b) measures relating to the status of foreigners, including asylum-seekers and refugees; (c) detention for the purposes of "political re-education"; (d) disciplinary measures; and (e) measures to combat social maladjustment.

25. On the other hand, to avoid duplication, the study does not include the administrative detention of mentally-ill persons because of the establishment by the Commission on Human Rights, by its resolution 1989/40 of 6 March 1989, of a working group to examine the draft body of principles and guarantees for the protection of persons detained on grounds of mental ill-health or suffering from mental disorder, adopted by the Sub-Commission in its resolution 1988/28 of 1 September 1988.

IV. TYPOLOGY AND PURPOSES OF ADMINISTRATIVE DETENTION

A. Threats to public order and to State security

1. Situation of civilian populations during armed conflicts

26. This heading covers the coercive measures which parties to a conflict may be obliged to take. The internment or placing in assigned residence of persons may be ordered only if the security of the Detaining Power makes it absolutely necessary (art. 42, Fourth Geneva Convention of 1949, sect. II). Such action shall be reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose (idem., art. 43). If the decision is maintained, the case shall be reconsidered at least twice yearly with a view to the favourable amendment of the initial decision, if circumstances permit.

27. Unless the protected persons concerned object, the Detaining Power shall, as rapidly as possible, give the Protecting Power the names of the persons who have been interned or subjected to assigned residence, or who have been released, and shall notify it of the decisions of the courts or boards mentioned above (idem., art. 43, para. 2). If any person voluntarily demands internment, and if his situation renders this step necessary, he shall be interned by the Power in whose hands he may be (idem., art. 42, para. 2). This category also includes cases of internment in the interest of civilians residing in the country at the time of the armed conflict in order to remove them, for example, from areas of bombardment.

2. Emergency situations

28. A number of countries resort to emergency measures in the event of threats to public order or to the security of the State. The Special Rapporteur on states of emergency, Mr. Leandro Despouy, observed that some 40 States had introduced states of emergency between August 1987 and November 1988. He also noted that the most serious violations of the human rights of detained persons most often occur during so-called emergency situations. State of emergency provisions usually allow the executive power to order the arrest and administrative detention of any person suspected of being a threat to security or public order. In the case of administrative detention, the courts generally have no power of prior authorization of an arrest, the grounds for which are too often formulated in vague and broad terms. It is therefore particularly important that the lawfulness of the administrative detention and treatment of detainees should be determined by a court within a few days of the arrest.

29. The legislation of one country practising apartheid, in which a state of emergency was proclaimed at the national level in June 1986 and extended each year thereafter, empowers all members of the police forces and other law

enforcement officials to arrest any persons suspected of constituting a threat to public order without an arrest warrant and to hold such persons incommunicado for an initial period of 14 days, which may be extended indefinitely by order of the Minister of the Interior. In May 1988, the total number of persons detained under the state of emergency could be estimated at more than 5,000, including many children below the age of 16.

30. Reference was also made to the case of a population which had been subjected to administrative detention before being expelled from its homeland.

3. Internal unrest and tensions

31. This category essentially concerns political offences and presupposes serious internal unrest and tensions. This latter condition must not be side-stepped in practice. In one country, hundreds of persons have been arrested on political grounds since 1980 under a 1961 decree-law providing that persons suspected of involvement in so-called subversive activities may be detained for more than five days if they are subject to a detention order approved by the head of State. Such persons can then in principle have their case studied by a special commission, but in fact no file has ever been examined.

B. Measures relating to the status of foreigners

32. These are the most commonplace, and relate to the following cases:

(a) Confinement pending execution of an expulsion or refoulement order, in the event of irregular entry into or sojourn in national territory. In some countries - whose example should be applauded - such a measure can be ordered only by or under the direct supervision of a judge, and thus does not constitute administrative internment;

(b) Foreigners either subjected to administrative detention or simply placed under house arrest. This is presented as a step intended to "neutralize" the individuals concerned politically, as part of a temporary high-security plan (during the visit of a head of State, an international conference, etc.). This measure is normally applied to political opponents in exile;

(c) People subject to extradition proceedings, although in many countries such proceedings are entirely judicial;

(d) The most disturbing case by far: that of foreigners seeking asylum or political refugees. The scale and gravity of this phenomenon warrant its treatment at some length. This latter category particularly caught the rapporteur's attention because of its extent in certain parts of the world, the complexity of the associated politics and, thus, the solutions required, and above all, the serious threats to human rights which it involves. It is discussed further below.

1. Extent of the refugee and asylum-seeker phenomenon

33. The situation of foreign asylum-seekers or political refugees is deeply worrying because of its importance, in particular in Central America, the Middle East and South East Asia, as was borne out at the International

Conference on Indo-Chinese Refugees held at Geneva on 13 and 14 June 1989. Administrative detention in the latter region affects or has affected:

(a) The 2 million Indo-Chinese who have fled their countries over the past 14 years, including 1.7 million who have been resettled in over 30 countries;

(b) The 165,378 people of Indo-Chinese origin (not counting the large numbers of people not receiving assistance from the Office of the United Nations High Commissioner for Refugees) who were in camps in the region on 30 April 1989;

(c) The 45,530 boat people, 2,703 of whom (6 per cent) had been rescued at sea, out of 62,348 arrivals in 1988.

2. Political complexity of the phenomenon

(a) Vietnamese refugees and asylum-seekers

34. On the subject of, for example, Vietnamese refugees and asylum-seekers, the Geneva Conference emphasized the growing number of "economic" immigrants among the asylum-seekers. Two suggestions were made:

(a) Greater rigour in and, hence, consistency among the various procedures for determining refugee status is needed;

(b) After the initial reception centres (whose purpose in part is to determine whether or not to grant refugee status), those accepted as refugees, who are to be resettled in third countries, should be transferred to different centres from those denied refugee status and awaiting repatriation. Within this latter category, candidates for voluntary repatriation should also be separated from those who are not.

35. As things stand, roughly half of those who have not obtained refugee status are in Hong Kong, in centres which could be divided, in terms of the criteria for administrative detention, into three categories:

(a) Completely closed centres, which inmates are forbidden to leave. These centres, which are intended to investigate applications for refugee status, take in everyone arriving since 15 June 1988, when the new refugee-status determination procedure instituted by the Hong Kong authorities took effect. Examples: Chi Ma Wan, Hei Ling Chau and Sai Kung;

(b) Semi-open centres: originally completely closed, they have been liberalized since 1988 (inmates are entitled to come and go within the centre and outside for employment, educational and leisure purposes, but must return at night). Their inmates include the boat people, *prima facie* refugees, who arrived in Hong Kong between 1982 and 15 June 1985. Examples: San Yick and Tuen Mun;

(c) Open centres: inmates can come and go freely.

36. UNHCR has unrestricted access to all three categories of centre. Despite its efforts, living conditions remain particularly poor, in part because of overcrowding in the closed camps, and dangerous, because the mafia has

infiltrated some camps and the security services offer little protection. Under Hong Kong law, detention centres can be visited by a justice of the peace designated to investigate detention conditions. Some non-governmental organizations believe, however, that such investigations are conducted in too close co-operation with the prison administration which runs most of the closed camps (visits announced by loudspeaker, interpreters appointed by the Government). It also seems that justices of the peace are not often called in, most investigations remaining at the administrative level.

(b) The Khmers in Thailand

37. The situation of the Khmers in Thailand is still more complicated. On the one hand, they are not regarded as refugees but as displaced persons. As of now they fall into three categories: roughly 300,000 people receiving assistance from the United Nations Border Relief Operations (UNBRO); roughly 18,000 receiving assistance from UNHCR; and the rest (roughly 40,000) scattered among Khmer Rouge satellite camps, situated no one knows where. On the other hand, the occupants of these camps are each "obedient" to one of the three factions in the Khmer coalition, as follows:

(a) Three sites remaining to the Khmer Rouge since the closure of the Taluan Centre: Site 8, Site K and the Otrao Centre;

(b) For the Kampuchean People's National Liberation Front (FNLPK) led by Son Sahn, there is Site 2, the largest by far (140,000 people on five square kilometres) and the Sok Sann camp isolated within Khmer territory; and

(c) For the Sihanouk followers, Site B, which presents the fewest problems at least as far as security is concerned.

38. The most critical case is that of the camps controlled by the Khmer Rouge. Some cannot be located and are thus inaccessible; and while it is possible to gain access to the others, it is extremely difficult for refugees to get out without exposing themselves to serious penalties. Requests are generally made in co-operation with the International Committee of the Red Cross and the Thai authorities, and are usually granted only for humanitarian reasons such as family reunification or the provision of medical care. Some cases of reprisals by the Khmer Rouge to dissuade further applicants have been reported. Many of these camps have been bombarded (site 8, for example) the exception being the Khao I Dang site which is under UNHCR protection.

39. Similar situations were still to be found until recently in Central America, especially in the case of Salvadorian refugees, some 40,000 of whom were held in two camps, at Mesa Grande and Colo Moncagua, now closed.

40. In order to prevent adverse effects from such types of administrative detention, the Executive Committee of UNHCR at its 1986 session laid down minimum rules governing the detention of refugees and asylum-seekers. According to these rules, administrative detention should be (i) provided for by law, and (ii) used only for the purposes of the status-determination procedure; (iii) detention should be humane, equitable and brief; (iv) appeals should be possible; and (v) detainees should be guaranteed the opportunity to contact UNHCR.

C. Administrative detention for purposes of "re-education"

41. After the Viet Nam War, between 10,000 and 15,000 people were detained for "re-education" purposes between 1975 and 1976; 6,000-7,000 of them still in re-education camps were set free in February 1987, but not allowed to leave the country. Since a recent - welcome - accord with the United States, they have been authorized to leave provided the interests of Viet Nam are not infringed. According to the Vietnamese authorities, some 120 people are still being held after nearly 14 years in detention. This form of detention is often presented as a humanitarian measure, allowing those concerned to avoid trial and the evil effects of prison and helping them to adapt to the new situation.

42. According to information obtained, the most frequent characteristics of such detention are placement in closed camps, forced manual labour, compulsory re-education based on self-criticism, and detention without any prospect of trial or even a release date, since the length of detention depends entirely on the "progress" made. If the author is permitted to comment here, the practice of "criminalizing" opponents in order to be able to dismiss them is offensive enough; in this case the affront to human dignity is more twisted still, since opponents are branded as "maladjusted".

43. It has already been pointed out in this report that international human rights law, exceptionally, admits administrative detention and it is thus not so much the principle of such detention that is at issue as the conditions in which it is applied, the safeguards provided, and conformity to international norms. The significance of that remark can be seen here, for it makes it clear that the very principle of administrative detention for political re-education purposes must be condemned on the grounds of its objective. It constitutes a gross violation of two stipulations in the International Covenant on Civil and Political Rights:

(a) Article 18, which provides that everyone shall have the right to freedom of thought or, in other words, the belief of his choice and that no one shall be subject to coercion which would impair his freedom to have or to adopt such a belief; and

(b) Article 14, paragraph 3 (g), which states that no one may be compelled to testify against himself or to confess guilt.

D. Disciplinary measures

44. These are essentially measures taken by the competent authority to punish indiscipline in the army (solitary confinement, confinement to barracks, assignment to a disciplinary unit, etc.) or in the course of a prison sentence (disciplinary confinement). According to the European Commission of Human Rights - regrettably - the latter measure constitutes a change in conditions of detention and not a different form of deprivation of freedom.

45. According to the prison regulations of one country, the prison director can impose the punishment of solitary confinement in a disciplinary cell and a diet of bread and water for a period of not more than three days. In another country, a detainee who is placed in a punishment cell must receive daily visits from a doctor, who must report to the director if he considers that such confinement should be ended for reasons of physical or mental health.

E. Measures to combat social maladjustment

46. Some persons who are extremely poor or socially maladjusted are also subjected to administrative detention. These are either preventive measures in respect of minors at risk or measures taken in pursuance of laws on vagrancy designed for the "protection of society". This category is important, since economic crisis (and hence unemployment) is likely to cause impoverishment, with the result that some unemployed persons may gradually be reduced to a state of vagrancy. The European Court of Human Rights ruled on this question in its judgements of 18 June 1971 (para. 68) and 6 November 1980 (paras. 96-98). In one country, the law on the prevention of prostitution provides for administrative detention or placement in a guidance centre.

V. LEGAL FRAMEWORK OF ADMINISTRATIVE DETENTION

A. Legal basis

47. The legal basis for administrative detention varies from one legal system to another. There may be constitutional or legislative provisions, which are the most common, although, in many cases, such provisions are made by delegation of legislative power (decree-laws, orders, etc.), as well as regulatory provisions (decrees or decisions) taken directly by the executive power. In some cases, straightforward directives are involved (for example, a directive from the head of State delegating his powers to the police, etc.) or there may be no legal provision whatever. In some countries, particularly in those where the Government has to deal with an uprising, administrative detention is not practised in accordance with any formal laws, but is a regular and officially recognized practice of the military authorities.

48. The right to liberty and safety is an inalienable right which the individual himself cannot renounce and situations in which a person may be deprived of his or her liberty must therefore be subject to interpretation, which is all the more restrictive, since the decision in question falls within the province of the executive authority. In the absence of any rules or regulations on administrative detention, analogies have to be established on the basis of the system of judicial detention.

49. According to one non-governmental organization, the over-general nature of the legal provisions in one country allows for the detention of persons supposedly engaged in vaguely defined activities which might potentially include lawful or unlawful acts relating, in particular, to State security and public order.

B. Authorities empowered to issue a detention order

50. With regard to the prevention and suppression of public disturbances, decisions are taken by authorities exercising either political or administrative responsibilities for the maintenance of order and, in particular, by the Head of State (President of the Republic, Emir, King), the Prime Minister or President of the Council, the Council of Ministers, the Minister of Defence, the Interior or Territorial Administration, the Consultative Commission, a representative of the Prosecutor's Department, a representative of the police, the army or the security forces or members of the prison staff.

51. Administrative detention therefore gives broad and often discretionary powers to the administrative authorities, which can use them merely on the basis of presumptions if they deem it necessary and are not bound to give the detainee any reasons for their decision. The fact that in some countries persons are detained simply on the order of a representative of the police or security forces leaves them wide open to all kinds of abuses, especially if they are imprisoned because of their opposition to the Government.

52. Consequently, according to the information communicated to the United Nations by a non-governmental organization, young people were allegedly harassed by patrols of revolutionary guards who arrest and check anyone they find suspicious. These mass arrests apparently take place without any legal supervision.

C. Length of detention

53. The following periods of detention have been identified:

(a) Undetermined period;

(b) Fixed period, varying from 15 days to 2 years, but renewable indefinitely; in some cases, renewal tends to be systematic, resulting in a virtually unlimited period (for example, in one country, the initial period of 2 years was renewed 7 to 10 times, resulting in 14 to 20 years of detention);

(c) Predetermined maximum period ranging from 6 hours to 3 years, depending on the country;

(d) Complex cases where the maximum period depends on the status of the decision-making authority.

D. Status and condition of the premises of detention

54. Under only six of the national legislations consulted is provision made for specific premises for administrative detainees. In the other cases, arrangements are extremely varied: military or police premises, police station cellars, court cells, prisons, specially designed centres or camps, farms or State enterprises. In one case, the requirement is simply "any place considered appropriate".

55. The Body of Principles specifies, with regard to the condition of premises, that places of detention shall be visited regularly by qualified and experienced persons (princ. 29, paras. 1 and 2).

E. The rights of administrative detainees

56. Administrative detainees should in principle enjoy the same rights as other detainees and, in particular, benefit from the Body of Principles, which provides for even more legal safeguards than the Standard Minimum Rules for the Treatment of Prisoners. According to one non-governmental organization, however, conditions of administrative detention in some countries are absolutely contrary to most of those principles: more so even than conditions of judicial detention.

57. Article 10, paragraph 1, of the Covenant provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The Committee on Human Rights has stressed that paragraph 1 of this article applies not only to accused persons (para. 2) and prisoners (para. 3) but also to all persons deprived of their liberty as indicated by its wording, its context (in particular the proximity of art. 9, para. 1, which deals with all types of deprivation of liberty) and the purpose for which it is intended. Furthermore, this article supplements article 7 of the Covenant on the prohibition of torture and cruel, inhuman or degrading treatment or punishment. Treatment with humanity and with respect for the dignity of all persons deprived of their liberty is a fundamental rule of a universal character which cannot depend on the available material resources.

1. Characterization of isolation as cruel, inhuman or degrading treatment

58. It may be asked when isolation in detention can be likened to cruel, inhuman or degrading treatment or to torture. Opinions vary as to the characterization of some forms of isolation as treatment or punishment prohibited by article 7 of the Covenant. Only one thing is certain at the international level: according to principle 6 of the Body of Principles, the term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time. Such treatment is prohibited by article 7.

59. What of other forms of isolation? A distinction is often drawn between two categories of situation: ordinary isolation and rigorous isolation. Ordinary isolation covers a wide variety of measures taken for the benefit of the detainee, at his request, or for medical, punitive or investigative reasons.

(a) In the first category, there is isolation intended to protect a detainee, sometimes at his own request, when he is the victim of vindictive acts by other detainees or is persecuted on racial or discriminatory grounds, or in order to avoid prison overcrowding;

(b) The second category includes (i) temporary medical isolation, especially of sero-positive detainees in order to avoid possible contagion; (ii) detention in a "disciplinary" cell, in which isolation for a limited time is standard practice; and (iii) isolation for the purposes of the investigation, in order to prevent contact among accused persons, the reason given being "the interests of truth".

60. "Rigorous" isolation involves measures which, depending on how restrictive they are, may resemble either sensorial isolation - prohibited under article 7 of the Covenant - or isolation with no visits, mail, newspapers, books, radio, television, prison labour or exercise allowed. Isolation involving only some or even only one of these restrictions, enforced more or less strictly, more closely resembles the second situation: where, for example, the detainee can take exercise, but alone, receive only one newspaper, have fewer visits but not none, etc.

61. The question of characterization as cruel, inhuman or degrading treatment arises mainly in the first situation, especially when such isolation, which is intended to prevent social relations, even indirect ones, occurs during administrative detention. The prison authorities know that, during the entire period of judicial detention while the investigation is being conducted, the detainee's full attention is focused on his trial, whereas, in the case of administrative detention, the lack of any investigation or trial leads to passive and even depressive behaviour, especially when, unlike judicial detention, no time limit has been set. In any event, even when the conditions for "acceptable" isolation are met, isolation should never be applied for a protracted period.

62. Other considerations: according to information provided by non-governmental organizations, the members of the police and security forces in some countries may not be prosecuted for offences committed "in good faith" and some members of the security forces interpret this as licence to ill-treat prisoners in the exercise of powers granted to them under the state of emergency.

63. The safeguards which would allow respect for the rights of administrative detainees to be effectively monitored include the following: a ban on solitary confinement; the right of detainees to visits by persons such as doctors, lawyers (see princs. 17, para. 1, and 18, paras. 1, 3 and 4, of the Body of Principles) and family members (princ. 19 of the Body of Principles); places of detention should be officially recognized as such and the name and place of detention of each person deprived of his liberty should be entered in a central register made available for consultation to the persons concerned, such as relatives; provisions expressly making confessions and other testimony obtained through torture or other treatment contrary to article 7 of the Covenant inadmissible; and training and instruction, for law enforcement officials, including a code of professional conduct, so that they do not resort to such treatment.

F. Existence of remedies as an intangible right

64. In the ideal case, the law specifically provides for remedies. In jurisdictional terms, this generally takes the form of an application for habeas corpus or a recurso de amparo (sanctuary or mandamus). The other situations encountered fall within the category of control enforced by the competent authorities themselves (domestic remedies, periodic reviews, certification of registers, communication of lists of detainees, etc.). The non-existence of a remedy, particularly the right to appeal to the courts, results from exclusion by a specific legislative provision, implicit exclusion (no remedy provided for) or suspension or delay, sometimes for several years, following the promulgation of a state of emergency.

65. International law recognizes that every administrative detainee has the right to take proceedings before a court. This right is, for example, provided for in article 9, paragraph 4, of the Covenant, which makes no distinction between administrative and judicial detention. On this important matter, the Inter-American Court of Human Rights has paved the way for great progress by international law in the protection of so-called "intangible" rights.

66. It will be recalled that article 27 of the American Convention on Human Rights (like article 4 of the Covenant and article 15 of the European Convention on Human Rights) states that some rights are intangible in that, since any violation of them impairs the inherent dignity of the human being, they may not be restricted or limited in any way, even during a state of emergency. These are the rights which protect life, and include, for example, the prohibition on summary executions and on torture and all forms of cruel, inhuman or degrading treatment or punishment. These are, so to speak, "naturally" intangible rights because, as Mr. de Menthon pointed out in his closing statement during the Nürnberg Trial, it is the human condition itself that is harmed by such violations. However, in a recent advisory opinion, the Inter-American Court (Advisory Opinion No. OC-9/87 of 6 October 1985, requested by the Government of Uruguay 1/) considered that the minimum guarantees 2/ established to ensure respect for the rights which were declared naturally intangible should themselves be regarded as intangible "because of their purpose", as it were.

67. Since the present report has established that the practice of administrative detention, more than any other form of detention, leads to serious risks of violation of the rights recognized as intangible even under a state of emergency, the rapporteur is of the opinion that the case law of the Inter-American Court should be studied in greater depth so that, for standard-setting purposes, it will be fully taken into account by international law.

68. Of course, these rules of procedure which are recognized as intangible "because of their purpose" would apply not only to administrative detention, but also to all other forms of detention. This seems to be the thrust of the position adopted by the Human Rights Committee which recalls, in its general comment 7 [16], that, even in situations of public emergency, the intangible provisions of the Covenant are non-derogable under article 4 (2), that it is not sufficient for the implementation of this article to prohibit such treatment or punishment or to make it a crime and that, under article 7, read together with article 2 of the Covenant, States must ensure an effective protection through some machinery of control. Complaints about ill-treatment must be investigated effectively by competent authorities and the alleged victims must themselves have effective remedies at their disposal, including the right to obtain compensation (see also princs. 33, paras. 1 to 4, 34 and 35 of the Body of Principles).

69. One non-governmental organization has indicated that, in some countries, the law authorizes detainees or victims to make use of such control procedures, although the latter are rarely automatic and depend in practice on the detainee's opportunities for contact with his relatives or a lawyer. It is difficult for the lawyer to challenge the detention, particularly if the authority in question has not specified the provision of the law under which the person is being detained or has not given any reasons for the person's detention, but bases its decision on the fact that the detainee might be a threat to State security. In such a case, the Government may regard the detention as secret, thus preventing any action by a lawyer or the courts, which cannot rule on the lawfulness of the detention. In some countries, the courts are not in a position to challenge the orders of a minister or the head of Government. A decision taken by the judge concerning the application for habeas corpus to order the release of a detainee may simply be ignored by the

Government authority; in some cases, this authority may even immediately arrest the person again and place him in administrative detention once more.

70. Even if provision is made for administrative review of detention by a monitoring body, this body, which is usually appointed by the Government, is not really independent; it has only an advisory role and may make only non-binding recommendations, but it cannot order the detainee's release. If there is a closed court hearing, witnesses often cannot be called. In some countries, where the law does not provide for administrative detention or where legal provisions exist but are not respected, persons are arrested and detained outside any legal framework without any possibility of a remedy.

71. The experience of what occurs in various parts of the world shows that the risk of ill-treatment is greater when the courts are not allowed to review detention orders issued by the executive. In this connection, one non-governmental organization has expressed concern about the adoption in one country of a decree under which a person may be held in prison for a period of two years in order to prevent him from acting in a way which will endanger security or the maintenance of order, without any possibility of being able to appeal that decision. Another organization also drew attention to the recent amendment of the national security act of one country under which no one may, in a court of law, challenge the lawfulness of a detention order against him.

G. Authorities empowered to admit remedies

72. A distinction has to be made according to whether or not the competent authority is a representative of the judicial authority.

(a) Institutions with jurisdictional powers: in 10 countries, an appeal is lodged directly with the Supreme Court. In the other cases, the appeal is heard either by the ordinary courts or, particularly when a state of emergency is in force, by special courts - for the most part, military courts. In two cases, jurisdiction is conferred upon the Attorney-General of the nation;

(b) Institutions without jurisdictional powers: these may be either prominent persons (an ombudsman, mediator, etc.) or collegiate bodies (consultative commissions and commissions of inquiry or supervisory commissions, with or without permanent status). In one country, the complaint must be examined by the Council of Ministers.

H. Right to compensation in cases of illegal or arbitrary detention

73. In a few countries, the legislation provides for a system of compensation. Compensation is paid under an amicable settlement by the administration or is fixed by judicial decision. One country indicated to the rapporteur that the complainant must petition the President of the Republic. In some systems, where the State is not required to make reparation, the complainant must take action against the person or persons responsible for the allegations which led to the detention; hence it is often impossible to adduce proof. In other cases, the victim may be able to have compensation set in principle, without being able to obtain guarantees that it will actually be paid.

VI. CIRCUMVENTION OF LEGAL PROCEDURES AND ABUSES

74. The information gathered reveals that far too many procedures are used to circumvent safeguards:

(a) Issue of a new administrative detention order as soon as the previous one expires or has been annulled by a court;

(b) Declaration of lack of jurisdiction by the civil courts on the grounds that the Government alone has jurisdiction over matters of national security;

(c) Ratification of international instruments without taking the domestic legislative measures required by those instruments;

(d) Judge prevented from visiting places of detention on the grounds of the secrecy of defence matters;

(e) Continual transfer of detainees from one prison to another to prevent them from being traced;

(f) A belated and summary charge is communicated to the party concerned, and to the judicial authority dealing with the case, shortly before it takes a decision on the application for habeas corpus;

(g) Under some legislations, an appeal must be made against a formal administrative decision; however, the authorities refrain from making the arrest or detention formal, no informal decision is rendered and the appeal is thus automatically rejected as inadmissible for lack of a case.

75. In some instances, administrative detention orders have been issued by the authorities against persons accused of political offences after they have been acquitted by the courts. In other cases, prisoners who had served their sentences were kept in prison under administrative detention orders issued by the Government. Such practices show that the process of administrative detention may be of an arbitrary nature.

76. In many countries, relatives are either little informed, badly informed or not informed at all about the arrest or, if they are informed, they are not told where the place of detention is. The detainee has no automatic right to communicate with his family or lawyer and correspondence is frequently prohibited. In some countries, the right of some detainees to communicate with a lawyer or their families has been delayed, restricted or even denied for many years, and other detainees have been kept in solitary confinement for periods of several months or even several years. In one country, the basic right of access to legal assistance has been contested by the Appellate Division in a decision dated July 1987. However, communication by detainees with the outside world and, in particular, their families, should not be denied for more than a matter of days (princ. 15 of the Body of Principles).

77. The indefinite extension of administrative detention, aggravated by the absence of prior notice to the person concerned, without his being heard and without any obligation to state the grounds for the decision, is a further source of abuse. In one country, there was a period when eight persons were detained under a decision taken following the proclamation of a state of

emergency for periods ranging from 15 to 22 years, without any form of trial, on the grounds of their alleged involvement in an armed revolt in 1962. In another country, a former parliamentarian had been detained since 1966 under the internal security act. It is thus possible to detain persons, without any legal remedy, for periods as long or even longer than those prescribed by a court for a serious offence, with considerable psychological repercussions on the detainee. In some cases, detention is extended by the successive implementation of different legal provisions (for example, as is too frequently the case in some countries, by detaining the person under both an administrative order and a court order or by arresting him immediately after his release). Furthermore, prolonged detention of more than two or three weeks allows injuries to heal in the case of ill-treatment, thereby removing any evidence when the detainee appears before the judge.

78. In a formerly divided and now united country, an act relating to administrative detention in political re-education camps has been applied retroactively and more severely in a part of the national territory where it did not formerly apply, despite article 11, paragraph 2, of the Universal Declaration of Human Rights and article 15, paragraph 1, of the Covenant, which relate to the principle of the non-retroactivity of laws, and have been ratified by the State in question.

79. The Human Rights Committee, the Commission on Human Rights and a non-governmental organization have a great deal of information on administrative detention that reveals the existence, in some countries, of psychological pressure (humiliation, verbal aggression, death threats or threats of violence against detainees or their families, etc.), ill-treatment, rape, torture sometimes resulting in death, disappearances and extra-legal executions. Incommunicado detention for periods which vary in length, but may be very long, facilitates such practices. The lack of regular medical check-ups, and of medical care during the first few days of detention is probably a frequent cause of detainee deaths. In the political re-education camps of one country, many persons are reported to have died from hunger, exhaustion resulting from forced labour, illness (malaria, tuberculosis), the denial of medical care, punishment and even summary executions.

80. Reliable information received from a non-governmental organization describes abuses of administrative detention in circumstances which are all the more unlawful in that they involve the use of children as hostages to compel their parents to give up any political activity described as "hostile to the Government". Children are also occasionally arrested to force their parents or members of their family who are wanted by the police to give themselves up. Children, and even sometimes babies, are detained together with their parents in order to compel the latter to confess to alleged political offences.

81. One Government informed the rapporteur that it was aware of the abuses to which administrative detention could lead, even under normal circumstances. Consequently, it has undertaken a series of studies for the purpose of amending the relevant texts, so as to enhance the powers of the judiciary as far as possible.

VII. RECOMMENDATIONS TO THE COMMISSION ON HUMAN RIGHTS AND CONCLUSIONS

A. Recommendations to the Commission on Human Rights

82. In resolution 1985/16, dated 11 March 1985, the Commission on Human Rights requested the Sub-Commission to make recommendations regarding the practice of administrative detention. On the basis of the foregoing, the rapporteur therefore makes the following recommendations:

(a) In view of the serious risk of violations of human rights involved in the practice of administrative detention and the fact that there is no United Nations procedure for monitoring all the situations in which administrative detention is practised, it is proposed that a special report on the development of all forms of administrative detention throughout the world should be submitted each year to the Commission for its consideration. In that case, the matter should be considered by the Sub-Commission not under the agenda item relating to the adoption of its report, but under the agenda item entitled: "The administration of justice and the human rights of detainees";

(b) It would be desirable, particularly in order to facilitate the rapporteur's task, to continue to consider any such practices which might be brought to the attention of the Centre for Human Rights and to gather information on the conditions in which they seem to be applied to new categories of persons deprived of their liberty, such as persons who may be suffering from communicable diseases (quarantine) and persons who, in some countries, are allegedly detained in specialized health centres once their illness is diagnosed (AIDS, for example);

(c) Particular attention should be paid to administrative detention by the Special Rapporteurs on summary executions, torture and states of emergency, as well as by the Working Group on Enforced or Involuntary Disappearances and the Working Group on the Question of Persons Detained on the Grounds of Mental Ill-health or Suffering from Mental Disorders, as well as by any other relevant monitoring or investigative body of the United Nations system;

(d) The rapporteur should be invited, if necessary with the support of the United Nations advisory services in the field of human rights, to make every effort so that, pursuant to General Assembly resolution 43/173, the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment becomes generally known and respected, especially by law enforcement officials. In that connection, to ensure the full effectiveness of principles 9 and 32 concerning recourse to a judicial or other authority and following the example of the Inter-American Human Rights Court (Advisory Opinion OC-9/87, dated 6 October 1985), the rapporteur should carry out an in-depth study, with a view to submitting proposals to the Commission on Human Rights, of the conditions under which the right to a remedy such as habeas corpus or any other similar remedy could be declared intangible.

83. On the other hand, it has finally been concluded that it would not be appropriate to draw up guidelines on the treatment of persons subjected to administrative detention. The suggestion was made when the preliminary report was submitted in 1987. It has been dropped for the following reasons:

(a) The Sub-Commission will recall that, following up the proposal by the Working Group on Detention, it requested the Sixth Committee of the General Assembly to amend the draft Body of Principles which it was then considering so as to extend it to all forms of detention, and hence to administrative detention. The General Assembly ultimately accepted that proposal, thereby making the drafting of specific guidelines on administrative detention inappropriate;

(b) In any case it would have been offensive to discriminate according to the type of detention, as if there could be different degrees of the right to be properly treated.

B. Conclusions

84. The appointment of a special rapporteur would give the United Nations system monitoring machinery covering virtually all the sectors at risk, in the form of:

(a) Special reports on the protection of intangible rights (prohibition of enforced disappearances, torture and summary executions);

(b) Special reports on tangible rights that are extremely likely to be violated on account of the "limitations or restrictions accepted in a democratic society". This would be the case of the proposed special report on administrative detention, which would supplement the already existing report on states of emergency or the report by the Special Rapporteur on the exercise of freedom of opinion and expression which the Sub-Commission intends to propose. At present, the consideration of the question of the protection of the human rights of persons subject to any form of administrative detention is not covered by any specific control procedure.

Notes

1/ The Government of Uruguay put the following questions to the Court:

(a) What judicial guarantees must remain in force during a state of emergency?

(b) Do the guarantees listed in the last sentence of article 27, paragraph 2, refer only to measures to protect the rights in question?

(c) Since the state of emergency very often involves the suspension of certain procedural guarantees, what happens in the case of the principle of the exhaustion of local remedies?

2/ Such minimal guarantees are, for example habeas corpus, and the recurso de amparo.

Annex I

SOURCES OF INFORMATION

A. Governments which have provided information to the rapporteur

Belize	17 May	1988
Bolivia*	18 April	"
Burundi*	16 July	"
	13 March	1990
Cameroon*	10 March	1989
Chad*	11 April	1988
China*	20 July	"
Colombia*	15 April	"
Cyprus*	10 June	"
Czechoslovakia*	27 June	"
Denmark	15 April and 3 June	"
Dominican Republic*	28 April	"
El Salvador	23 August	"
Finland*	22 April	"
Guatemala	28 April and 5 May	"
Madagascar	17 June	"
Malawi	13 May	"
Malta*	29 April	"
Mauritius	27 April	"
Mexico*	8 June	"
Morocco	20 May	"
Niger*	29 March	"
Nigeria*	20 June	"
Peru	25 May	"
Philippines*	12 and 25 May	"
Portugal	29 June	"
Qatar	22 June	"
Spain	3 November	"
Sri Lanka*	25 April	"
Sweden*	18 May	"
Turkey*	6 April	"
Uganda*	14 September	"
Venezuela*	29 August	"
Yugoslavia*	5 September	"

* Governments which have also provided detailed information on their legislation.

B. States whose legislation the rapporteur has consulted

Afghanistan
Albania
Algeria
Angola
Argentina
Australia
Austria

Belgium
Brazil
Bulgaria
Burma

Canada
Chile
Congo

Ecuador

France

Gambia
German Democratic Republic
Greece

India
Indonesia
Iraq
Ireland
Islamic Republic of Iran
Israel
Italy

Japan
Jordan

Kenya
Kuwait

Lao People's Democratic Republic
Lesotho
Libyan Arab Jamahiriya

Malaysia
Mozambique

Namibia
Nepal
Netherlands
Nicaragua

Pakistan
Paraguay
Poland

Romania
Rwanda

Singapore
Socialist Republic of Viet Nam
South Africa
Spain
Sudan
Swaziland
Switzerland
Syrian Arab Republic

Thailand
Tunisia

Union of Soviet Socialist Republics
United Kingdom of Great Britain
and Northern Ireland
United Republic of Tanzania
United States of America
Uruguay

Zaire
Zambia
Zimbabwe

C. Competent United Nations bodies which have provided information to the Rapporteur

Office of the United Nations High Commissioner for Refugees (UNHCR)	5 April	1988
United Nations University (UNU)	8 April	"

D. Specialized agencies

International Labour Organisation (ILO)	14 April	1988
World Health Organization (WHO)	19 April	"
United Nations Educational, Scientific and Cultural Organization (UNESCO)	8 April	"

E. Other intergovernmental organizations

Inter-American Commission on Human Rights (OAS)	18 April	1988

F. Non-governmental organizations in consultative status with the Economic and Social Council

Amnesty International	17 June 20 February	1988 1989
International Association of Democratic Lawyers	26 April	"
Law Association for Asia and the Pacific (LAWASIA)	8 March and 14 April	"
International Centre of Sociological, Penal and Penitentiary Research and Studies	12 May	"
International Commission of Jurists	28 April, 9 June, 14 and 25 July	"
International Federation of Human Rights	September	"
International Institute of Humanitarian Law (IIHL)	4 March	"
Liberty International	23 March	"
League of Red Cross and Red Crescent Societies	29 March	"
Organization of African Trade Union Unity	10 March	"
International Society of Social Defence	13 June	
Inter-Parliamentary Union	6 April	"

G. Other organizations and other sources of information

1. Other organizations

Asia Watch	1 August	1988
League for Human Rights and Freedoms	13 April	"
Minnesota Lawyers International Human Rights Committee	13 April	"
University of Houston	1 June	"
Consejo General de la Abogacia Española	3 November	"

2. Other sources of information

(a) Documents from other non-governmental organizations gathered outside the consultancy procedure

Amnesty International:

Annual Reports.

States of emergency and violations of the right to life, July 1988, POL 30/02/88, 33 p.

Administrative detention, POL 30.1.88, SF 88 CO 299.

International Commission of Jurists: "States of emergency, their impact on human rights, questionnaire on states of exception and administrative detention", 1983, pp. 394-410.

Inter-Parliamentary Union: Reports of the Committee on Human Rights of Parliamentarians (1986 to 1989).

International Federation of Human Rights: "Rapport de mission. Japon: La garde à vue", February 1989, pp. 19-20.

Ligue des droits de l'homme: Hommes et libertés, No. 54, "Centres de rétention", France, p. 25.

Maison des Droits de l'homme de l'Université de Paris X, "Les violations des droits de l'homme au Viet-Nam depuis 1975", symposium organized by the Khanh Anh Buddhist Association under the auspices of the Maison des Droits de l'homme, 18 February 1989.

(b) Documents of relevance transmitted by the following organizations: International Law Association; Comisión de Derechos Humanos de la Asociación de Médicos, Odontólogos y Profesionales Afines de la Caja de Seguro Social; Latin American Federation of Associations of Relatives of Disappeared Detainees; Helsinki Watch; Procedural Aspects of International Law Institute; Regional Council on Human Rights in Asia; Syndicat des Avocats de France.

(c) Specialized publications

Alderson, J, Human rights and the police, (Strasbourg, Council of Europe, 1984), 207 p.

Burns, M. Yvonne, "To police the police: some thoughts on the appointment of a police ombudsman for South Africa", The Comparative and International Law Journal of Southern Africa, vol. XIX, No. 2, July 1986.

United Nations. Seminar on amparo, habeas corpus and other similar remedies, Mexico, 15-28 August 1961. (United Nations, New York, 1963), 116 p. (ST/TAO/HR/12).

United Nations. Seminar on judicial and other remedies against the abuse of administrative authority. Buenos Aires, 31 August - 11 September 1959. (United Nations, New York), 66 p.

Decisions and reports: Inter-American Court of Human Rights. Habeas corpus in emergency situations, Advisory Opinion No. OC-8/87. Human rights law journal, vol. 9, 1988, pp. 94-104.

Harold, Rudolph, "The Judicial Review of Administrative Detention Orders in Israel", Israel Yearbook on Human Rights, vol. 14, 1984, pp. 148-182. Published under the auspices of the Faculty of Law, Tel Aviv University.

Makhoba, P., Nape, P., Jele S., Coleman, A., and Rice, M., "The experience of detention", Human Rights Quarterly, vol. 10, No. 1, February 1988, pp. 17-49.

Rodley, Nigel, The Treatment of Prisoners under International Law, (Paris, UNESCO and Oxford, Clarendon Press, 1987).

Reynaud, A., Les droits de l'homme dans les prisons, (Directorate of human rights, Council of Europe, Strasbourg).

Screvens, Raymond, "Les situations d'urgence et la police: sauvegarde de l'ordre public et des droits de l'homme", Revue de droit pénal et de criminologie, No. 4, avril 1988, pp. 339-349.

United Nations. Seminar on judicial and other remedies against the abuse of administrative authority, organized by the United Nations in co-operation with the Government of Sweden, Stockholm, 12-25 June 1962, (New York, 1962).

Shimon Shetreet, "A Contemporary Model of Emergency Detention Law: an assessment of the Israeli law", Israeli Yearbook on Human Rights, 1984, pp. 182-221.

Annex II

INTERNATIONAL INSTRUMENTS OF RELEVANCE TO ADMINISTRATIVE DETENTION WITHOUT CHARGE OR TRIAL

A. Table showing the pertinent provisions of the main international instruments of relevance

	Universal Declaration of Human Rights	International Covenant on Civil and Political Rights	Standard Minimum Rules for the Treatment of Prisoners	European Convention on Human Rights	African Charter on Human and Peoples' Rights	American Declaration of the Rights and Duties of Man	American Convention on Human Rights	Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
Right to liberty and security	Art. 3	Art. 9-1		Art. 5-1	Art. 4, 6	Art. 1	Art. 5-1 Art. 7-1	
No arrest without charge	Art. 9	Art. 9-1		Art. 5-1	Art. 6	Art. 25	Art. 7-2 7-3	
Liberty of movement	Art. 13-1	Art. 12			Art. 12-1	Art. 8		
Presumption of innocence	Art. 11	Art. 14-2	Art. 84-2	Art. 6-2	Art. 7-1(b)	Art. 26	Art. 8-2	Princ. 36-1
Right to be informed		Art. 9-2 Art. 14-3(a)	Art. 35, 36, 92	Art. 5-2 Art. 6-3(a)			Art. 7-4	Princs. 10, 11-2 12, 13, 14
Right to be heard by a court	Art. 10	Art. 2-3(b), 9-3		Art. 5-3	Art. 7	Art. 25	Art. 7-5	Princ. 11-1
Remedies	Art. 8	Art. 2-3(a), 9-4	Art. 35, 36	Art. 5-4	Art. 7		Art. 7-6 Art. 25-1	Princs. 9, 30-2 32, 33
Compensation								Princ. 35-1
Restrictions provided for by law		Art. 4, 12-3						
Contact with the outside world			Art. 37, 92					Princs. 15, 16, 19, 17-1, 29-2

B. List of other relevant international instruments

Code of Conduct for Law Enforcement Officials of 1979

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984

Geneva Conventions of 12 August 1949 relative to the protection of victims of war, and Additional Protocols I and II of 1977

Organization of African Unity Convention of 1969 governing the Specific Aspects of Refugee Problems in Africa

International Labour Organisation Conventions No. 29 of 1930 concerning Forced Labour and No. 105 of 1957 concerning the Abolition of Forced Labour

European Convention on Extradition of 1957

Convention relating to the Status of Refugees of 1951 and Protocol relating to the Status of Refugees of 1967

Declaration on the Rights of Disabled Persons of 1975

Declaration on the Rights of Mentally Retarded Persons of 1971

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

Set of Minimum Principles for the Treatment of Detained Persons (resolution (73) 5 of the Committee of Ministers of the Council of Europe, Committee of Ministers, cf. 4th preliminary observation)

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)

Safeguards guaranteeing protection of the rights of those facing the death penalty of 1984

Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1982

Resolution 17 (XXXI) of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees entitled "Problems of extradition affecting refugees" and resolution 44 (XXXVII) entitled "Detention of refugees and asylum-seekers"

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Forty-second session
Item 10 (a) of the provisional agenda

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Report on the practice of administrative detention, submitted by Mr. Louis Joinet

Addition

VII. RECOMMENDATIONS TO THE COMMISSION ON HUMAN RIGHTS AND CONCLUSIONS

C. Supplementary recommendations

85. As far as standard-setting is concerned, there no longer seems to be any need for further initiatives since by decision of the General Assembly the body of principles for the protection of people detained for penal offences, now the "Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment", has been extended to administrative detention.

86. A strong need for suitable machinery is, however, evident on the practical level, to prevent and report violations, in law or in fact, of international standards concerning the legality of all forms of detention.

87. The Committee on Crime Prevention and Control, on the one hand, although it devotes much of its time to preparing standards on detention and to the way in which Member States incorporate them into their legislation, has no mandate to set up verification machinery.

88. On the other hand, the mandates of ICRC and UNHCR are restricted to assessing the physical and moral state of detained persons and do not extend to their legal status. UNHCR has been consulted and has shown great interest in the suggestion.

89. To deal with this lack of a machinery, four recommendations are proposed as options:

(a) Option I: Appointment of a Special Rapporteur with a mandate covering administrative detention alone

This was the original recommendation. Since the Commission's resolution 1985/16 essentially concerned administrative detention, this option has the merit of strictly fulfilling its request; but it no longer seems suitable for the situation as it stands, since as stated above the Body of Principles now applies equally to all forms of detention, which are subject to identical international standards.

(b) Option II: Appointment of a Special Rapporteur with a mandate covering detention both by an administrative authority and by a judicial authority

This option would be in line with the above-mentioned decision of the General Assembly to cease to make any formal distinction between the two kinds of detention.

(c) Option III: Appointment of a Special Rapporteur with a specific mandate for situations of arbitrary or unauthorized detention of any kind

(i) Given the extent of the task, the Special Rapporteur's mandate should be restricted to scrutinizing serious violations only, not extended to a general responsibility for places of detention, whatever the conditions there. This is why the suggestion is to apply the notion of "arbitrary or unauthorized detention".

(ii) "Arbitrary detention" would be understood to mean detention totally lacking any legal basis.

(iii) "Unauthorized detention" would be understood to mean detention with a legal basis or under legal conditions more limited or restrictive than those allowed, under certain conditions, by international instruments.

(iv) The risk of abuse in all the categories of detention listed in section IV, paragraph 24, of document E/CN.4/Sub.2/1990/29 would be covered.

(d) Option IV (variant of option III): Appointment of a five-person working group rather than a single Special Rapporteur.

Prompted by the machinery set up by the Commission on Human Rights in the case of enforced or involuntary disappearances, this variant is suggested in the hope that it might be more effective, by being better able to deal with the variety of categories of detention as described in section IV of document E/CN.4/Sub.2/1990/29.

90. While keeping abreast of the total situation, each member of the group could devote himself particularly to one category:

(a) one expert to detention by a judicial authority;

(b) one expert to detention by an administrative authority;

(c) one expert to the detention of juveniles (administrative or legal);

(d) one expert to asylum-seekers and refugees in administrative detention;

(e) one expert to all other categories.

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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Protection of the human rights of United Nations staff members, experts and their families

Updated Report prepared by the Special Rapporteur: Mrs. M-C. Bautista

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INTRODUCTION

A. Mandate

1. The Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 1988/9 entitled "Protection of staff members of the United Nations system" expressed its deep concern that violations of human rights of staff members of the United Nations system and the threats against their security and independence had increased over the past year and stated that these violations of the fundamental rights of staff members of the United Nations system and these threats against their security and independence could only have negative effects on the implementation of the mandates of the organs and agencies of the United Nations system.

2. In that resolution the Sub-Commission decided to entrust one of its members, without financial implications, with the task of undertaking an examination of the aforesaid violations of human rights of staff members of the United Nations system, their families and experts as well as of the repercussions of these violations on the functioning of United Nations organs and agencies. The Sub-Commission further requested the Secretary-General, the heads of the specialized agencies, including the International Atomic Energy Agency, the General Agreement on Tariffs and Trade, and the various staff representative organs of the United Nations system to assist the designated member in his/her task. Finally, the Sub-Commission invited the designated member to submit a preliminary report to the Sub-Commission at its forty-first session.

3. On 1 September 1988, the Chairman of the Sub-Commission announced the designation of Mrs. Mary Concepción Bautista to carry out the task mandated in resolution 1988/9.

4. The Special Rapporteur presented her preliminary report to the forty-first session (E/CN.4/Sub.2/1989/28). The Sub-Commission subsequently adopted resolution 1989/30 in which it invited Mrs. Bautista to continue her study and present an updated report to the Sub-Commission at its forty-second session taking into account also those cases which have been successfully settled during the year. The Sub-Commission furthermore requested her to consider the implementation of the measures referred to in paragraphs 3 and 4 of the aforementioned resolutions. Paragraph 3 requests Member States to allow medical teams to investigate cases in which the health of staff members and experts and their families who are being detained is reported to have suffered and to make available the necessary medical treatment. Paragraph 4 urges Member States, in accordance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, to provide adequate and prompt information concerning the arrest or detention of United Nations staff members and their families, and to grant the representative of the competent international organization access to them without delay.

5. In addition, the Sub-Commission requested Member States, the Secretary-General, and the heads of secretariat of the specialized agencies who have not yet done so to communicate relevant information in order to enable the Special Rapporteur to continue her mandate. The present report is submitted in accordance with paragraph 6 of that resolution.

6. The Commission on Human Rights at its forty-sixth session on 2 March 1990 adopted resolution 1990/31 in which it took note with appreciation of the preliminary report of the Special Rapporteur.

7. Pursuant to Sub-Commission resolution 1989/30, the Special Rapporteur requested the Governments of Afghanistan, Chad, Ethiopia, Israel, Jordan, Nepal, Somalia and the Syrian Arab Republic to provide her, if they so wish, with any information or comments they might have with regard to names of staff members, who came to the Rapporteur's knowledge, held in detention in those countries. The Special Rapporteur further contacted the United Nations Security Co-ordinator, the heads of specialized agencies and other intergovernmental organizations to provide her with information on the violations of human rights of staff members and their families, as well as on resolved and pending cases of violations of human rights of staff members and their families, on steps which have been taken to assist them and possible suggestions on how to avoid the recurrence of such incidents. Information was also requested on the matters raised in operative paragraphs 3 and 4 of the said Sub-Commission resolution.

8. As at 31 July 1990, information has been received from the Hashemite Kingdom of Jordan (11 July 1990), the Food and Agriculture Organization of the United Nations (5 June 1990), the United Nations Children's Fund (25 June 1990), the United Nations Development Programme (12 July 1990), the United Nations Industrial Development Organization (20 April 1990), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (25 May 1990) and the United Nations Security Coordinator (21 May 1990). The Committee on the Security and Independence of the International Civil Service, the Co-ordinating Committee for Independent Staff Unions and Staff Associations of the United Nations system and the United Nations Staff Union at Headquarters also submitted relevant information. The Geneva Staff Association of the World Health Organization provided detailed information on two cases (12 July 1990). The United Nations Educational, Scientific and Cultural Organization (7 June 1990) reported that it had no further information to communicate at this stage.

9. The present report has taken into account the information received from the above-mentioned organizations, the annual reports of the Secretary-General to the General Assembly on respect for the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations, the discussions in the Fifth Committee and the reports containing the views of the staff representatives of the United Nations Secretariat submitted to the General Assembly. In addition, the advisory opinion rendered on 15 December 1989 by the International Court of Justice in accordance with Economic and Social Council resolution 1989/75 of 24 May 1989 forms a pertinent source of information for the present report.

B. United Nations concerns with respect to the human rights and the privileges and immunities of staff members and their families

1. Background

10. In 1980, the Commission on Human Rights in resolution 31 (XXXVI) expressed its concern at infringements of the human rights of United Nations staff members and appealed to Member States of the United Nations to respect their obligations under the various international instruments they had undertaken to observe. The Administrative Committee on Co-ordination (ACC) welcomed the resolution by the Commission, and stated that any infringement of the security and independence of staff members of organizations of the United Nations system by a Member State was a serious threat to international co-operation (E/1980/34).

11. The General Assembly in resolution 35/212, took note of the statement by the Administrative Committee on Co-ordination, stated its awareness of the absolute necessity that staff members be enabled to discharge their tasks as assigned to them by the Secretary-General without interference on the part of any Member State or any other authority external to the Organization, and requested the Secretary-General to report on any cases in which the international status of the staff members of the United Nations or of the specialized agencies has not been fully respected. Since then, the Secretary-General has annually submitted a report to the General Assembly describing cases in which the privileges and immunities of staff members of the United Nations and the specialized agencies have not been respected.

12. In addition, the General Assembly in resolution 35/213 of 17 December 1980, authorized staff representatives of the United Nations Secretariat to submit their views, and such views are submitted every year to the Assembly through the Secretary-General.

13. Since 1980, the matter of ensuring respect for the privileges and immunities and human rights of United Nations staff members, experts and their families has been the object of the attention of various United Nations organs. The Commission on Human Rights, at its forty-sixth session, adopted resolution 1990/31 in which it expressed its grave concern that a significant number of personnel in the service of the United Nations continue to be held captive or are otherwise unaccounted for and noted the need for updated and complete information on the situation of United Nations staff members, experts and their families detained, imprisoned, missing or held in a country against their will. The Commission further reiterated its preoccupation with the inordinate delays which different organizations of the United Nations system face when trying to exercise fully the right of functional protection of their staff members. In that resolution the Commission also urged Member States to allow medical teams to investigate cases in which the health of staff members and experts and their families who are being detained is reported to have suffered and to permit the necessary medical treatment to be made available. In addition the Commission called upon Member States to allow the representative of the competent international organizations to attend any hearing concerning United Nations staff members, experts and their families.

14. The General Assembly, in its resolution 44/186 of 19 December 1989, took note with grave concern of the report submitted by the Secretary-General (A/C.5/44/11) and of the developments indicated therein, in particular the reported cases of abduction and killing, as well as the, once again, very high number of new cases of arrest and detention and the very negative developments in respect of various previously reported cases. The Assembly called upon all Member States scrupulously to respect the privileges and immunities of all officials of the United Nations, the specialized agencies and related organizations. The staff of these organizations were called upon by the Assembly to fully comply with the provisions of Article 100 of the Charter and with the obligations resulting from the Staff Regulations and Rules of the United Nations. The Assembly urged the Secretary-General promptly to follow up all cases of arrest, detention and any matters relating to the security and proper functioning of officials of the United Nations and the specialized agencies and related organizations.

2. Procedures to be followed in cases of arrest, detention or death

15. In May 1982, the Secretary-General appointed a task force composed of representatives of the Administration and of the staff with the mandate to prepare proposals concerning the security, safety and independence of the staff members relating to three areas of concern: (a) the release of imprisoned and detained staff members, (b) measures for enhancing respect for the privileges and immunities of the international civil service and preventing future concurrences of arrest or detention, and (c) global security measures aimed at improving the security of staff members in difficult duty stations. 1/

16. In order to ensure that cases of arrest, detention, disappeareance or death of any United Nations employee, other agent or family member be reported immediately to Headquarters, an Administrative Instruction was issued, setting out the relevant reporting procedures. An essential feature of these procedures is the transmittal to Headquarters of accurate and up-to-date information on each staff member who has been arrested or detained, or who has disappeared or been killed, in order to ensure that the information pertinent to each case is centrally available.

17. The Secretary-General furthermore stated:

> "in cases of non-observance of the applicable privileges and immunities by the Government concerned, care will be taken to preserve the contractual rights of the staff member until the case is clarified. Since the administrative status of staff members can differ greatly, the relevant measures will be applied on a case-by-case basis. Wherever possible, the Organization will press claims against a Government for compensation where any staff member has disappeared or died in circumstances apparently engaging the responsibility of that Government.
>
> In cases of arrest or detention, the Secretary-General will use such means as are available to him to ensure respect for the privileges and immunities of international officials. The Secretary-General will continue to intervene personally with the Government concerned in appropriate cases. If the situation so warrants, the Secretary-General will designate a special representative to represent him in negotiating with the Government concerned. Representations to the Government will be made on a continuing and regular basis until the case is clarified". 2/

18. The Administrative Instruction contained a list of officials who were designated to undertake special responsibilities for the security and protection of United Nations personnel and property at various duty stations. In accordance with the Administrative Instruction, when there was evidence to suggest that any United Nations staff member - whether internationally or locally recruited - or other agent of the United Nations or member of their immediate families had been arrested or detained by authorities of a Government, the designated official for security matters at the duty station concerned was instructed immediately to report to the United Nations Security Coordinator.

19. The Administrative Instruction also provides that the designated official shall immediately contact the Foreign Ministry of the Government concerned and request:

(a) All relevant information about the arrest or detention;

(b) The Government's co-operation in arranging, as a matter of urgency, that representatives of the United Nations be given access to the individual arrested or detained.

20. In addition, the Administrative Instruction provided that, if the arrest or detention was carried out by an unauthorized or unknown person or persons rather than by authorities of a Government, the incident shall also be reported immediately, and that the procedure outlined in the Administrative Instruction should be followed, except in those respects where it is clearly inapplicable. 3/

21. In November 1984, the International Labour Office issued a circular setting out procedures to be followed in cases of arrest and detention of ILO staff members which are similar to those provided by the United Nations. 4/

22. Pursuant to the mandate given to him by the General Assembly as the Chief Administrative Officer of the United Nations, the Secretary-General continues to play an active role in the matter, offering his good offices and informing the General Assembly through the Fifth Committee on an annual basis on cases in which the privileges and immunities of staff members of the United Nations and the specialized agencies have not been respected. In the preparation of this report the Special Rapporteur perused all the relevant reports submitted by the Secretary-General to the General Assembly since 1981. 5/

C. Legal rights of the United Nations in cases of arrest or detention of staff members

23. The Fifth Committee of the General Assembly, assigned to consider administrative and budgetary matters, has repeatedly dealt with aspects of the protection of detained and arrested staff members. Over the years it has become the focal point of these discussions. In 1983, the Fifth Committee submitted a memorandum to the General Assembly on the "United Nations Legal Rights when a staff member or other agent of the United Nations, or a member of their family is arrested or detained". 6/ According to the memorandum the term "agent" includes, but is not necessarily limited, to United Nations officials (staff members) and experts on mission for the United Nations.

24. The aforementioned memorandum stipulates, inter alia, that:

> "All United Nations officials and experts on mission for the United Nations are immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. This immunity - which is also known as functional immunity or immunity for official acts, also confers administrative proceedings of a quasi-judicial nature and administrative enforcement measures as well as personal arrest or detention. Experts on mission for the United Nations also enjoy immunity from personal arrest or detention for non-official acts and, in this respect, their rights are similar to those of the highest-ranking United Nations officials - Assistant Secretaries-General and above - who have diplomatic status".

25. As the legal bases for the immunity of staff members and experts, the memorandum referred to the pertinent provision of the Charter (Article 105) and the Convention on the Privileges and Immunities of the United Nations (Articles V and VI) which, in addition, are to be construed in the context of other applicable principles and rules of the Charter and of international law.

26. The memorandum defines the term "expert" as follows:

> "Experts on mission for the United Nations are persons who are performing functions or assignments for the United Nations without being members of the staff. Examples of experts on mission for the United Nations are military observers on peace-keeping missions and persons serving in their individual capacity on certain subsidiary bodies of the United Nations without being either officials (staff members) or representatives of Member States, under certain conditions participants in United Nations seminars or symposia are considered experts on mission for the United Nations". 7/

27. With respect to the arrest or detention of a staff member the memorandum asserted: 8/

> "Where the staff member, agent or family member in question has been arrested, or is in detention or custody, the only opportunity to learn the facts of the case is through access to him or her, and it is the practice at Headquarters, and elsewhere as appropriate, that one or more representatives of the United Nations visit and converse with staff members or agents and, when required, family members who have been arrested or are otherwise kept in the custody of local authorities.
>
> During such visits and consultations the representatives of the United Nations must have the right to pursue any line of discussion which will clarify the questions both whether the arrest or detention is connected with the official status or function of the person involved and whether an injury may have occurred to the United Nations through a violation of any obligation of a State towards the United Nations and the person concerned. The mere fact that there is no apparent connection between the reason for the arrest or detention given by the authorities of the State and the duties, functions and status of the official or expert on mission in question, or of members of their families, is insufficient to nullify the right of the United Nations to visit and converse with the person in custody. If that were so, the right would be made entirely dependent upon the reasons given by the authorities of the State, and that would make the right practically ineffective.

The United Nations is not confined to the arrested or detained person as a source of information. Rather, in accordance with the fifth principle in Article 2 of the Charter that 'all Members shall give the United Nations every assistance in any action it takes', it is incumbent on the State authorities to inform the United Nations of the main reasons and grounds for the step taken. In the event that formal charges are made, it is clear that the Organization has a right to be appraised thereof without delay."

28. In addition, the United Nations claims the right:

(a) To visit the staff member or agent;

(b) To be appraised of the grounds for the arrest or detention, including the main facts and formal charges;

(c) To assist the staff member or agent in arranging legal counsel for his or her defence;

(d) To appear in legal proceedings to defend any United Nations interest affected by the arrest or detention. 9/

29. The Secretary-General has on regular occasion addressed the Fifth Committee on the deterioration of the situation concerning the safety and security of United Nations staff members. In 1986, the Secretary-General related the issue of independence to the concept of safety. He affirmed that: "The staff member would remain independent as long as he knew that, in the performance of his official duties, he would be protected not only from interference but also from prosecution, loss of freedom, or death. There had been and continued to be too many cases in which that had not been so, or, at the least, in which the Secretary-General had not been given the access to the staff member that would have helped him to find out whether or not official duties had been involved. When the Secretariat requested a Member State to give it access to a staff member, it did not do so capriciously or in order to provide him with undue protection, but to make sure that the State had scrupulously respected the international obligations it had assumed and that the staff member had respected his duty to be impartial, which excluded any act that might jeopardize the public order of the State in question. Those concepts were important because the health and efficiency of the Secretariat largely depended on the safety and independence of staff members". 10/

30. Earlier that year, in a statement to the Administrative Consultative Committee (ACC), he had referred to the repercussions that the detention of a staff member may have on the contractual status and strongly endorsed a decision taken by ACC in 1983. In that decision the ACC affirmed that: "In cases of non-observance of the applicable privileges and immunities by the Government concerned, care should be taken to preserve the contractual rights of the staff member until the case is clarified. Whenever possible, the organizations will press claims against a Government for compensation where a staff member has disappeared or died in circumstances engaging the responsibility of that Government". 11/

31. Introducing his report to the Fifth Committee at the forty-third session of the General Assembly, the Secretary-General regretted to have to inform the Committee that the situation had deteriorated since 1987. No less

than 168 new cases of arrest and detention or abduction of officials in 16 different countries or territories had been reported to the United Nations Security Co-ordinator during the period 1 July 1987 to 30 June 1988. It was totally unacceptable, he stated, to have to face a situation in which, in violation of the Charter and of the Convention on the Privileges and Immunities of the United Nations and other applicable legal instruments, staff members were subjected to arbitrary or unexplained detention or even abduction. 12/

32. The Secretary-General assured that:

> "the Secretariat was doing its utmost to ensure that staff members were not arrested or detained when and where they were engaged in performance of official duties. It intervened incessantly in such cases of arrest or detention. However, it was also the responsibility of Member States, individually and collectively, to ensure that staff members could perform their official duties effectively, free from arrest, detention or abduction".

He drew attention in particular to a proposal made by the United Nations Development Programme (UNDP), to which he referred in paragraph 34 of his report.

33. The proposal was that Member States should agree that access by the designated official or his representative to detained United Nations staff should be granted within 24 hours of their arrest and that a formal explanation for the arrest and detention should be furnished through the designated official to the Secretary-General within 48 hours. What was needed therefore was a renewed and unconditional commitment by Governments scrupulously and unequivocally to observe their obligations under the existing international legal instruments. 13/

34. In 1989, the Secretary-General reiterated on two occasions his growing concern on the matter. In a statement in connection with Headquarters Staff Day on 15 September he ensured that he would do everything in his power to resolve all instances of injustice to staff members and would urge Member States to extend to staff members not only the protection which they needed, but also the treatment to which they were entitled by virtue of being international civil servants. 14/

35. Moreover, in a speech on the occasion of Human Rights Day he ensured that the Body of Principles for the Protection of All Persons under Any Form of Imprisonment would become generally known and respected. 15/

36. In addition, the United Nations Legal Counsel in a similar vein has stated: "that the arrest, detention or abduction of officials remained a chronic problem and, notwithstanding the efforts of the Secretary-General and the Executive Heads of the agencies concerned, difficulties were still encountered in obtaining timely information, and access was routinely denied to officials seeking to determine whether there had been a breach of respect for privileges and immunities. As pointed out in previous reports, the arrest, detention or abduction of officials not only raised legal questions regarding the breach of international instruments on privileges and immunities and the violation of basic human rights but also had serious administrative and financial implications for the organizations stemming from the contractual

status of the staff member concerned. The present report underscored the unacceptably large number of cases of officials under detention for a lengthy period of time (in two instances as long ago as 1980) and the very significant increase in cases involving officials of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in the occupied Gaza Strip and the occupied West Bank". 16/

37. In his concluding statement to the Fifth Committee in 1988, the Legal Counsel reaffirmed the view of the Secretary-General that: "If Member States granted access to detainees and provided an official explanation of the reasons for their detention very soon after the detention, potential misunderstandings about functional immunity would be reduced and there would undoubtedly also be an enormous decline in the number of cases which had to be brought to the attention of the General Assembly". 17/

38. The Legal Counsel of the United Nations in his statement before the Fifth Committee in 1989 recognized that, notwithstanding all efforts, the number of cases of arrest, detention and abduction had remained extremely high during the reporting period and that the Middle East, in this regard, was an area of major concern. The United Nations and other organizations continued to encounter resistance in obtaining access to arrested or detained officials in order to provide them with the necessary assistance and to determine whether there has been any breach of respect for the privileges and immunities of the officials concerned. The organizations continued to face difficulties in obtaining adequate and timely information on the reasons for arrest and detention. 18/

39. In 1949, the International Court of Justice in its Advisory Opinion on Reparation for Injuries Suffered in the Service of the United Nations held: "that in the event an agent of the United Nations in the performance of his duties should suffer injury in circumstances involving the responsibility of a State, the United Nations has the legal capacity to bring an international claim against the responsible State with a view to obtaining the reparation due in respect of the damage caused both to the United Nations and to the victim or persons entitled through him. The Court stated that this is true whether the State is a Member State or not, and whether or not the State is that of the agent's (or staff member's) nationality". It was emphasized that any such claim brought by the United Nations must be based on a breach of obligations due to the Organization, and the claim thus is distinct from any rights that the agent's (or staff member's) national State may possess. It follows that the United Nations has a right of functional protection of those of its staff members or other agents in respect of whom a State possibly may have violated its international obligations. 19/

40. The Court also stressed the link between the performance of duties and the need for protection on the site where the staff member is performing the duties. In the Court's opinion: "In order that the agent of the United Nations may perform his duties satisfactorily, he must feel that this protection is assured to him by the Organization, and that he may count on it. To ensure the independence of the agent, and consequently, the independent action of the Organization itself, it is essential that in performing his duties he need not have to rely on any other protection than that of the Organization (save of course for the more direct and immediate protection due from the State in whose territory he may be). In particular, he should not have to rely on the protection of his own State. If he had to

rely on that State, his independence might well be compromised, contrary to the principle applied by Article 100 of the Charter. And lastly, it is essential that - whether the agent belongs to a powerful or to a weak State; to one more affected or less affected by the complications of international life; to one in sympathy or not in sympathy with the mission of the agent - he should know that in the performance of his duties he is under the protection of the Organization. This assurance is even more necessary when the agent is stateless". 20/

41. The United Nations Secretariat confronted with the arrest of a staff member, requested an opinion from its Legal Counsel on the extent of the right of the United Nations to visit and converse with staff members in custody or detention.

42. The opinion held that: "the right to visit and converse with the person in respect of whom a State may possibly have violated its international obligations is a necessary consequence of a right of diplomatic protection. The State or organization having such a right of protection cannot exercise it unless there is an adequate opportunity to find out the facts of a case, where the person concerned is in custody or detention, the only such opportunity is through access to that person. This is recognized, for example, in the Vienna Convention on Consular Relations of 24 April 1963. 21/ Consuls are the usual channel through which States ascertain the facts about persons to whom they are in a position to afford diplomatic protection. Consequently the Convention provides in article 36:

> "1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
>
> ...
>
> (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement ...". 22/

43. The opinion continued by stating:

> "It is therefore clear that the United Nations has the right to visit and converse with one of its staff members in custody or detention whenever there is any possibility that the United Nations or the staff member in the performance of his duties may have been injured through the violation by a State of any of its obligations either towards the United Nations or towards the person concerned. During such visits and conversations the United Nations representatives must have the right to pursue any line of discussion which would clarify the questions both whether an injury has occurred, and whether it was incurred in connection with performance of the staff member's duties. The mere fact that there is no obvious connection between the reason given for the detention by the State and the staff member's duties is insufficent to nullify the right of the United Nations to visit. If that were so, the right of protection of the United Nations would be made entirely dependent upon the reasons given by the detaining State, and that would make the right practically ineffective.

Even if in fact there is no connection between the staff member's duties and the reason for the detention, the United Nations should nevertheless be allowed to visit a staff member under detention, and to ascertain through all appropriate discussions not only whether there has been any legal injury but also whether the person is being treated with humanity and with full observance of the international standards of human rights. This is particularly true when the presence of the staff member, in what is to him a foreign country, is due to his employment by the United Nations. In such cases it is inappropriate to apply narrowly the test of connection with official duty, since the person's very presence in the country is the result of, and a necessary condition for, the performance of that duty, and hence, in a sense, is connected with it". 23/

44. The case of Mr. Mazilu, a former member of the Sub-Commission has raised the question of the applicability of article VI, section 22 of the Convention on the Privileges and Immunities of the United Nations reading: "Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions".

45. A legal opinion on the question written by the United Nations Office of Legal Affairs dated 23 August 1988, interpreted the facts related to Mr. Mazilu's case and concluded: "the Sub-Commission considers that Mr. Mazilu, though now an ex-member, still has a valid assignment. It also appears that this would not run counter to the established practice of the Sub-Commission, which on several occasions has charged former members with the completion of reports that had been assigned to them as members (for example: Special Rapporteurs on Religious Intolerance; Right to Leave; Death Penalty)".

46. Consequently, Mr. Mazilu appears to have a valid assignment from the Sub-Commission, and when working or attempting to work on that assignment is, therefore, performing a task or mission for the United Nations. From this it follows that he should be considered an "expert on mission for the United Nations" within the meaning of article VI of the Convention on the Privileges and Immunities of the United Nations. As Romania became a party to that Convention on 3 July 1956, without any reservation to article VI, Mr. Mazilu, inter alia, is entitled under section 22 to the "privileges and immunities ... necessary for the independent exercise of his functions" during the period of his assignment, including the time spent on journeys in connection with his mission, and is also to be accorded immunity from legal process even after completion of his assignment". 24/

47. Having considered relevant resolutions of the Sub-Commission (1988/37) and the Commission (1989/37), the Economic and Social Council, by resolution 1989/75, subsequently requested the International Court of Justice on 24 May 1989 to give an Advisory Opinion on the legal question of the applicability of article VI, section 22 of the Convention on the Privileges and Immunities of the United Nations in the case of Mr. Mazilu as Special Rapporteur of the Sub-Commission. 25/

48. With respect to the nature of the Special Rapporteurship and the status of Mr. Mazilu as ex-member of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Court stated that:

> "Since their status is neither that of a representative of a Member State nor that of a United Nations official and since they carry out research independently for the United Nations, they must be regarded as experts on missions within the meaning of section 22, even in the event that they are or are no longer, members of the Sub-Commission. Consequently, they enjoy, in accordance with section 22, the privileges and immunities necessary for the exercise of their functions and in particular for the establishment of any contacts which may be useful for the preparation, the drafting and their presentation of their reports to the Sub-Commission.
>
> Therefore, the Court unanimously, is of the opinion that article VI, section 22 of the Convention on the Privileges and Immunities of the United Nations is applicable in the case of Mr. Mazilu as a special rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities". 26/

I. INTERNATIONAL INSTRUMENTS DEALING WITH THE PRIVILEGES AND THE HUMAN RIGHTS OF UNITED NATIONS STAFF MEMBERS, EXPERTS AND THEIR FAMILIES

49. The status of international civil servants and experts working in that capacity for the United Nations and its specialized agencies is regulated by the following international instruments:

(a) Charter of the United Nations, Articles 100, 104 and 105;

(b) Convention on the Privileges and Immunities of the United Nations of 13 February 1946; 27/

(c) Convention on the Privileges and Immunities of the Specialized Agencies; 28/

(d) Staff Regulations of the United Nations and Staff Rules.

50. In addition, a number of Headquarters Agreement were concluded, inter alia:

(a) Agreement between the United Nations and the United States of America dated 26 June 1947; 29/

(b) Interim Agreement on Privileges and Immunities of the United Nations concluded between the Secretary-General and the Swiss Federal Council dated 19 April 1946 and approved by the General Assembly on 14 December 1946; 30/

(c) Agreement between the Government of the Hashemite Kingdom of Jordan and the United Nations Relief and Works Agency for Palestine Refugees in the Near East, signed on 14 March and 20 August 1951; 31/

(d) Agreement between the Government of Chile and the United Nations Economic Commission for Latin America signed in Santiago on 16 February 1953; 32/

(e) Agreement between the United Nations and the Government of Thailand relating to the Headquarters of the Economic Commission for Asia and the Far East, signed in Geneva on 26 May 1954; 33/

(f) Agreement between the United Nations and Ethiopia regarding the Headquarters of the United Nations Economic Commission for Africa, signed on 18 June 1958; 34/

(g) Agreement regarding the Headquarters of the International Atomic Energy Agency of 11 December 1957; 35/

(h) Agreement regarding the Headquarters of the United Nations Industrial Development Organization of 13 April 1967. 36/ Since 19 January 1981, the Organization has become a specialized agency. 37/

(i) Agreement regarding the Headquarters of the Economic Commission for Western Asia of 13 June 1979. 38/

51. The final text of the Annexes to the Convention on the Privileges and Immunities of the Specialized Agencies contains a standard clause identical to article VI, section 22 of the Convention on the Privileges and Immunites of the United Nations to the extent that experts on mission for the Organization shall be accorded: "immunity from personal arrest or seizure of their personal baggage". This applies to, inter alia, the International Labour Organisation (Annex I), Food and Agricultural Organization (Annex III), United Nations Educational and Scientific Organization (Annex IV), World Health Organization (Annex VII).

52. A similar clause has been inserted in the Headquarters Agreements with the regional organizations. 39/

53. Other basic elements are, inter alia, immunity from legal process of every kind, inviolability for all papers and documents, freedom of speech and freedom of movement.

54. As many of the reported cases are staff members from the United Nations Relief and Works Agency for Palestine Refugees in the Near East, the Special Rapporteur would like to reiterate that article 2 of the Agreement between the Hashemite Kingdom of Jordan and UNRWA guarantees freedom of movement within Jordan and between Jordan and the neighbouring Arab States.

55. In cases of doubt of what constitutes an official act for purposes of immunity from legal process, the Secretary-General has the exclusive competence to determine the extent of the authority, duties and functions of United Nations officials. These matters cannot be determined by or subjected to scrutiny by local courts. The Secretariat has its own disciplinary procedures and the Secretary-General has the power to waive the immunity particularly where the course of justice would be impeded. 40/

56. By letter of 3 November 1981, the United Nations Security Co-ordinator for the Secretary-General sought the advice of organizations on the arrangements for reporting on arrest and detention. 41/

57. At the Ad Hoc Inter-Agency Meeting on Security Matters in July 1987 participants were asked to determine whether the procedures outlined in Annex N of the Security Handbook, were still valid for their particular agency. Agencies should inform their local respresentatives that any action should be co-ordinated with the designated official in the country. 42/

58. In conformity with the earlier mentioned ILO circular, 43/ each time when there is reason to believe that an ILO staff member or one of his close family members has been arrested or detained, the Director of the local ILO office should inform the Director-General without delay. The United Nations Security Co-ordinator should also be informed, in order to avoid duplication of efforts.

59. The Director of the local ILO office should immediately contact the Minister of Foreign Affairs of the country concerned and request:

(a) All relevant information with respect to the circumstances of the arrest or detention;

(b) The co-operation of his Government in order that ILO officials are allowed access to the arrested or detained staff member.

60. The report addressed to the Director-General should indicate:

(a) The name and nationality of the person, his working conditions and his status with the ILO;

(b) The date, place and other relevant circumstances regarding the arrest or detention;

(c) The legal basis of the arrest;

(d) The authority who ordered the arrest;

(e) Whether the arrested or detained person enjoys consular protection.

If the arrest or detention has been the work of others i.e., persons not belonging to the Government or unidentified persons, or persons acting without a mandate, the incident should also be reported without delay.

II. EFFORTS TO ENSURE RESPECT FOR THE PRIVILEGES AND IMMUNITIES OF UNITED NATIONS STAFF MEMBERS, EXPERTS AND THEIR FAMILIES

A. Review of information

1. Introduction

61. The Secretary-General continues to report to the General Assembly on his activities aimed at ensuring respect for the privileges and immunities of United Nations staff members and experts. In his most recent report, covering the period 1 July 1988 to 30 June 1989, the Secretary-General focused on cases involving arrest, detention and abduction of officials, and matters involving the status, privileges and immunities of officials. 44/

62. In addition, the Secretary-General transmits for consideration annually to the Fifth Committee information submitted by the staff unions and associations of the United Nations Secretariat. 45/

63. As was pointed out earlier, the Special Rapporteur, pursuant to Sub-Commission resolution 1989/30 requested Member States, the Secretary-General, the heads of Secretariat of the specialized agencies, including the International Atomic Energy Agency and the General Agreement on Tariffs and Trade to communicate relevant information to her.

64. The Special Rapporteur, however, deems it necessary to consider also relevant information received from other sources, including United Nations Staff Associations.

2. The report of the Secretary-General

65. The report of the Secretary-General to the forty-fourth session of the General Assembly contained a consolidated list (Annex I) of 99 staff members under arrest and detention or missing and with respect to whom the United Nations and the specialized agencies and related organizations have been enabled to exercise fully their right to protection. The report also contained information (Annex II) on this subject submitted by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the United Nations Economic Commission for Africa (ECA), the United Nations Truce Supervision Organization (UNTSO) and the Food and Agricultural Organization of the United Nations (FAO). As in previous years, the report was based on information obtained from United Nations subsidiary organs, offices or commissions as well as specialized agencies and related organizations. The report of the Secretary-General also contained information on restrictions on official and private travel of officials of the United Nations, the specialized agencies and related organizations, and on taxation of officials.

66. In this report, the Secretary-General pointed out that the reporting period had been marked by one particularly disturbing development, the murder of Lieutenant-Colonel William Richard Higgins, an officer of the United States of America who was serving as the Chief of a group of military observers assigned to the United Nations Interim Forces in Lebanon (UNIFIL). In this context, mention should be made of Sub-Commission resolution 1989/26, in which the Sub-Commission specifically condemned the abduction and murder of United Nations personnel as most recently exemplified by the brutal murder of

Lieutenant-Colonel W.R. Higgins, and urged the Secretary-General to take all possible measures pursuant to previous resolutions of the Security Council and the Commission on Human Rights to stop hostage-taking and to seek the release of all hostages now being unlawfully detained.

67. The Secretary-General stated that the Middle East continued to be an area of prime concern with the most cases of arrest, detention and abduction of officials. The number of cases of arrest and detention without charge or trial of staff members of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) remained very high. During the reporting period, 157 UNRWA staff members had been arrested or detained. Nine of the 157 staff had been detained twice during this period. Ninety-three of the 157 had been arrested or detained and released without charge or trial, including 11 who had been held by militia groups. Eight had been charged, tried and sentenced to various terms of imprisonment. In no case had UNRWA received adequate and timely information on the reasons for the arrest and detention despite requests to the authorities. It had had access to 26 detained staff from the occupied West Bank and to 37 detained staff from the Gaza Strip. Several of these staff were being held in prisons in Israel, having been transferred there from the occupied West Bank and the Gaza Strip.

68. As to new cases, the Secretary-General referred to two staff members of the United Nations Development Programme (UNDP). Mr. Abdul Diallo and Ms. Afton Ba Diallo, who had been detained by the Mauritanian authorities on 18 May 1988 and 22 May 1988, respectively. They had subsequently been accused of fraudulently obtaining Mauritanian citizenship and expelled to Senegal. Although the Secretary-General intervened twice with regard to this matter, these incidents were still pending resolution.

69. The report of the Secretary-General (Annex II) contained information from the United Nations Economic Commission for Africa (ECA). ECA referred anew to the case of Mr. Tesfamariam Zeggae, a General Service staff member at ECA and an Ethiopian national who had been arrested at his home at Addis Ababa on 2 March 1982. It was reported that there had been no further progress in this case. Despite the personal intervention of the Secretary-General of the United Nations and several interventions by the administration of the ECA, Mr. Zeggae had been sentenced by the First Instance Court in March 1987 to life imprisonment. On 5 January 1989, ECA had sent a note verbale to the Ministry of Foreign Affairs requesting that they arrange for Mr. Kofi Annan, Assistant Secretary-General for Human Resources Management and United Nations Security Co-ordinator, to meet the detained staff member. In a note verbale of 10 January 1989, the Ministry of Foreign Affairs had stated that it would try to arrrange the meeting, but finally it did not take place.

70. ECA further reported the following new cases:

(a) Mr. Daniel Riley, Emergency Co-ordinator and a national of the United States, and Mr. Abeba Baysi, driver, an Ethiopian national, both UNHCR staff members, while on official mission to Assab on 19 January 1989, had been shot at by military personnel and wounded in the head and arm respectively. On 27 January 1989, ECA had sent a note verbale to the Ministry of Foreign Affairs deploring the fact that a United Nations vehicle carrying United Nations staff had been shot at without provocation by the military and requesting the Ministry to investigate the incident. To date no reply has been received;

(b) On 8 June 1989, Ms. Ghennet Mebrahtu, a locally recruited WHO staff member and Ethiopian national working with the WHO Panafrican Centre for Emergency Preparedness and Response in Ethiopia, had been detained by Ethiopian security personnel who had taken her away from her home to an unknown destination. A note verbale addressed to the Ministry of Foreign Affairs by ECA had requested information on the staff member's whereabouts and that it be granted access to her, but to no avail.

71. In its information submitted for inclusion in the Secretary-General's report the Food and Agricultural Organization of the United Nations (FAO) reported that Mr. Mohammed Omar, a locally recruited G-1 messenger of Afghan nationality, had been taken away by personnel believed to be from the Ministry of State Security on 17 May 1989, having left his residence with his daughter on the way to the FAO office. On the same day a note verbale had been sent to the Protocol Department of the Ministry of Foreign Affairs of Afghanistan seeking the urgent assistance of the Ministry in determining and advising FAO of the whereabouts of Mr. Omar, and if he was in detention, the nature of the charge, if any, made against him. A further note verbale had been sent on 21 May 1989 asking again for assistance in establishing the whereabouts of Mr. Omar. The Ministry of Foreign Affairs had first advised that Mr. Omar would be exempt from service and released but then informed the organization that he had volunteered to serve in the army and therefore would not return. The Ministry declined to put this information in writing. Further efforts were being made to secure his release, but without success.

72. As to the case of Mr. Sunder Thapa, a national of Nepal and a FAO staff member at the G-2 level working as a driver in that country on whose case FAO has already reported, 46/ the organization stated that no further information could be obtained. Mr. Abel Nyirenda, a national of Zambia working as a G-1 watchman in that country had been arrested on 16 March 1989 by the police for suspected theft of a radio. He was apparently beaten by the police and on 29 April 1989 died of the consequences (internal bleeding) after five weeks of illness. Apart from the statement of the staff member no further evidence of his mistreatment was available; the authorities were not prepared to allow an autopsy of the body, which had already been buried. Mr. Ouabi Alimi, a locally recruited FAO staff member assigned to a project in Togo as a driver had been arrested on 31 August 1988 following a car accident while on official duty. Mr. Alimi had remained under detention until 2 September.

73. It was further reported that events in Mauritania in April 1989 had led to the expulsion of several FAO staff members from that country. Formal action was undertaken through the FAO Representative in Mauritania:

(a) Mr. Abdoulaye Diaw, a national of Mauritania, working for the FAO Representative as a G-4 mechanic and co-ordinator of the vehicles in that country, had been arrested and expelled from Mauritania to Senegal during the night of 23 to 24 May 1989;

(b) Mr. Ndiome Pouye, a national of Senegal, working for the FAO Representative as a G-2 driver, had been expelled from Mauritania to Senegal on 2 May 1989;

(c) Mr. Demba Niang, a national of Mauritania, working as a G-2 driver/mechanic for FAO in that country, had been expelled to Senegal on 2 May 1989;

(d) Mr. Mouhamedou Ba, a national of Mauritania, employed as a G-2 driver in that country, had been expelled from Mauritania on 12 June 1989.

3. Information provided by staff representatives

74. The information presented by staff representatives of the United Nations Secretariat to the General Assembly included a list of 134 staff members whose rights had been violated by 18 States Members of the United Nations. It was based upon information provided by the representative of the Secretary-General and by other sources. The staff representatives stated that in the overwhelming majority of the cases cited in this list there had been no due process, no access by the United Nations, no opportunity for the staff member to choose legal representation and no open trial. Those staff had been imprisoned without having had any form of trial or even a sentence. Some had even spent more than five years in jail.

75. Concern was expressed by the staff representatives that, despite repeated resolutions of the General Assembly and the Commission on Human Rights, recommendations by the Secretary-General and the Administrative Committee on Co-ordination, the overall security situation of United Nations staff continued to deteriorate. Illegal detentions, imprisonments, abductions, killings and other abuses of the legal and human rights of the staff continued unabated.

76. The staff representatives of the United Nations Secretariat reported that the situation of staff members of the United Nations in Afghanistan was extremely grave and of those serving with UNRWA particularly alarming. Eighty-three staff members of the United Nations had been detained or imprisoned in the Middle East. Six had been abducted or were missing; six others had died in prison. Of those in prison, 65 had been detained or imprisoned by the Israeli authorities in the Gaza Strip and on the West Bank; in the Syrian Arab Republic, 15 had been detained or imprisoned, 2 had died in prison and 1 was missing. Five others were either missing or had been abducted by militias or unidentified elements in Lebanon. In Jordan, three staff members had been detained or imprisoned in Egypt, one staff member was under detention.

77. The staff representatives further reported that over the past decade, many staff members of the United Nations and their families in Ethiopia had been illegally arrested, detained and imprisoned without hearing or trial. Others had been forced into exile or killed. Some had been released from illegal detention without restitution, and others continued to languish in prison. One, Melake Belay, was unaccounted for; Tesfamariam Zeggae, is reported now blind.

78. In July 1989, in a related development, the Staff Council, the legislative body of the United Nations Staff Union, adopted a resolution addressed to the Secretary-General. It requested him to make it possible for staff members whose countries are undergoing internal strife to remain with the Organization following the expiration of their secondments and to be given career appointments in accordance with the Charter of the United Nations and the assurances given by the Secretary-General at Geneva. The resolution's purpose was to ensure that staff members' contracts could be renewed without putting them in difficulty with their Government.

79. The judgement, No. 482 of 25 May 1990, by the Administrative Tribunal of the United Nations concerning three United Nations staff members at Headquarters underscored this position. The Tribunal found that the applicants had not been seconded in conformity with the applicable principles. The applicants' situation had not been defined in writing by the competent authorities specifying the conditions and particularly the duration of the secondment. "Neither the United Nations administration nor the Government concerned nor the staff members may invoke a secondment which does not exist", the Tribunal declared. It believed, therefore, that the United Nations was not obliged either to seek the authorization of or abide by the decision of a Government in order to renew the applicants' contracts.

80. The Secretary-General subsequently reinstated the affected staff members rescinding his decision of 12 December 1989. He thereby implemented the aforementioned judgement of the Administrative Tribunal that career appointments should be granted to the staff members concerned as of 1 February 1990.

81. As a result of the efforts undertaken by the Secretary-General, designated officials and officials in the field and with the support and activities of the staff unions, it has been possible to achieve the release of many staff members who were previously reported as being under arrest or detention. Mr. Shimelis Teklu, a staff member of the Office of the United Nations High Commissioner for Refugees (UNHCR), detained in Ethiopia since 2 January 1984, was released in June 1989. In Lebanon, Mr. Omar Mustafa Hussein, a staff member of UNRWA who had been listed as missing since 15 April 1987, was also released. Eleven other UNRWA staff members detained in Lebanon during the reporting period by militias or unknown elements were released. In Chad, active intervention assured the quick release of 24 May 1989 of Mr. Nassar Dandjita, local administrative assistant of the World Food Programme (WFP), who was arrested on 6 May 1989. In Jordan, Mr. Jibril Taher Mohammed Jibril, a staff member of UNRWA, detained since 31 December 1987, and whose case became a matter of strenuous efforts of the Administration and the Federation of International Civil Servants' Association (FICSA) was released on 21 February 1989. Of those arrested during the reporting period, 39 staff members of UNRWA in the occupied Gaza Strip and 35 in the occupied West Bank were released without charge or trial. Mr. Ahmad Mahmoud Lababidi, arrested in 1988 in the Syrian Arab Republic, Mr. Abdel Karim Keswamy and Mr. Jousef Jum'a, arrested by the Syrian armed forces in 1989 in Lebanon, all of whom are staff members of UNRWA, were released in the first half of 1989. Mr. Khalil Ahmad Abu Sleema, also a staff member of UNRWA, arrested in Egypt on 25 August 1989, was released without charge or trial on 20 December 1989.

4. Information received by the Special Rapporteur pursuant to Sub-Commission resolution 1989/30 47/

Governments

82. The Government of Jordan communicated to the Special Rapporteur information on the case of Mr. Ahmad Khalil, a staff member of UNRWA detained in Jordan. It reported that it had no record of the detention of the above-mentioned person in Jordan.

Specialized agencies

Food and Agriculture Organization of the United Nations

83. FAO transmitted detailed information to the Special Rapporteur which corrected, added to, or confirmed information on cases which FAO had submitted for inclusion in its preliminary report and in the report of the Secretary-General to the forty-fourth session of the General Assembly. It divided its information into:

(a) Cases transmitted to the Government concerned;

(b) Cases not transmitted to the Government concerned;

(c) Other cases;

(d) Views and comments.

(a) Cases transmitted to the Government concerned

84. With respect to FAO staff members in Afghanistan, it referred to the case of Mr. Saleem Hairan stating that since the information provided last year, 48/ no additional information had become available. In the case of Mr. Mohammed Omar referred to in paragraph 71, it added that Mr. Omar was granted special leave without pay for the duration of the military service. With respect to the case of Mr. Sundur Thapa, a locally recruited national of Nepal, FAO stated in addition to the facts already known, 49/ that it had no information on record to the effect that the staff members human rights were not respected by the Nepalese authorities. The case of Mr. T. Jawabri, a Syrian national, was already reported last year to the Special Rapporteur, but more precise information had become available. In this case, the FAO representative in the Syrian Arab Republic was unofficially informed on 31 May 1983 that Mrs. Jawabri was held due to a charge of having committed acts against national security, in that "she had been a correspondent between the reactionary rightist movement in Iraq and a similar organization in Syria", whereas her husband was accused of having assisted her in this regard. Nevertheless, the Organization has no information on whether the couple were formally charged. In 1986 a family member informed the Organization that Mrs. Jawabri was held at Katana women's prison where she was allowed to receive visits once a week. Mrs. Jawabri was released from custody on 20 January 1990, without any restrictions being placed on her. She is apparently in good health.

(b) Cases not transmitted to the Government concerned

85. The case of Mr. Nooruddin, a locally recruited FAO staff member referred to in last year's report, could not be further clarified, except for the information that the FAO representative in Afghanistan was granted access to him in December 1984. In the case of Mr. Daulat Mir, a locally recruited Afghani, FAO was able to provide the Special Rapporteur with more detailed information. He was reportedly arrested at his own home on 28 August 1984 and taken to the State Security Headquarters at Shish Darall and subsequently to the Prime Minister's Office where he was told that "somebody had mentioned [his] name among the culprits". He appeared before a revolutionary court on

three occasions: on 10 December 1984, on 1 July 1985 and on 18 November 1986. Immediately thereafter he was called to military service. Shortly after his arrest, several attempts had been made to obtain from the Ministry of Foreign Affairs information on the reasons for his arrest and detention, as well as authorization to visit him in his place of detention. By a note verbale dated 11 September 1984, the Ministry confirmed that Mr. Daulat Mir had been arrested and indicated that the reason was "suspicion of [his] being connected to counter-revolutionary bands", but failed to mention whether and when access would be granted. Access was granted to the FAO representative only in December 1984. The UNDP Resident Representative sought exemption from military service on behalf of Mr. Daulat Mir. The latter never resumed his duties with the Organization and was separated effective 31 December 1987, at the expiry of his fixed-term appointment. FAO could not trace the whereabouts of Mr. Abdul Fattah Wadood, a Palestinian national.

(c) Other cases

86. Additional information concerning the Mauritanian cases became also available. Mr. Abdoulaye Diaw had been separated from the Organization on 31 March 1990 at the expiry of his fixed-term appointment. Other previously reported cases also terminated with separation from the Organization after expiration of contract: Mr. Dembu Niang (14 October 1989), Mr. Amadow Dieng (30 September 1989), Mr. Ndiane Pouyl (31 May 1990) and Mr. Mouhammed Ba (30 June 1989).

87. Furthermore, Ms. Yacine Ba, a national of Mauritania was employed as secretary on a casual labour basis when she was expelled. Ms. Awa Doubouya, a national of Mauritania (national of Senegal at birth) assigned as a G-4 secretary left the project in Mauritania of her own accord on 4 May 1989 and repatriated to Senegal. Mr. Issa Dabos N'Diaye, an internationally recruited national of Senegal, assigned as a P-4 Engineer/Agronomist to Project MAU 86008 E01, was evacuated for reasons of personal security on 6 May 1989 to Senegal upon instruction of the UNDP Resident Representative. On 8 August 1989 he was transferred to a project in Cape Verde, where he has been working since. Due to the urgent character of his departure from Mauritania, he had to leave his personal effects and bank deposits behind. By telex of 5 October 1989, the FAO representative informed him that the local police of Noakchott had confiscated parts of his personal effects, that his bank accounts had been blocked and that his advance payment to the Société Nationale d'Eau et Electricité (SONELEC) had not been restituted. The Organization is taking steps to resolve the problem. FAO had not been able to obtain additional information regarding the circumstances of the death of Mr. Abel Nyirenda, a locally recruited national of Zambia, who had died after having been severely beaten in custody on suspicion of theft of a radio.

United Nations Children's Fund

88. UNICEF replied that all cases of arrest and detention involving UNICEF staff members are reported immediately to the Office of the United Nations Security Co-ordinator, who has the overall responsibility of ensuring the safety and security of United Nations personnel serving in the field. At the same time, when such situations occur, the head of UNICEF Office, in co-ordination with the United Nations Resident Co-ordinator at the locality, requests the local authorities to allow us immediate access to the arrested or detained staff members. The purpose of having immediate access to our staff

members is to ensure that no functional immunities have been violated. During its meeting with the staff members, UNICEF extends all possible assistance, such as payment of their salaries to their dependants, helping them to obtain a defence lawyer, medical assistance etc.

89. In addition, it informed the Special Rapporteur about the following cases:

(a) Mr. Taj Mohammed - released from jail on 10 July 1989 and separated from UNICEF service upon expiration of his fixed-term, project funded, appointment;

(b) Mr. Mir Zaman - released from jail on 8 February 1987 and has been working on and off since on short-term appointments with UNICEF, as a driver;

(c) Mr. Shah Tawakal - died in jail in May 1987;

(d) Mr. Ghaisuddin Sabri - released from jail in January 1986 and separated from UNICEF service after having reached an agreed termination of his permanent appointment.

90. The Executive Director, Mr. James P. Grant, in a statement before UNICEF's Executive Board meeting, on 27 April 1990, recalled the tragic death of Mrs. Jena Hlass, a national Programme Assistant in Beirut, who had worked with UNICEF for 11 years. She was dragged from her car and shot. The same fate was undergone by another UNICEF staff member, Mrs. Nabila Brev, one year earlier. 50/

United Nations Development Programme

91. UNDP submitted information on two cases in Chad, one case in Somalia, two cases in Afghanistan and one case in Ethiopia. In Chad, Mr. Betel Mbainathan had been detained on 31 July 1988 and was subsequently released on 3 September 1988. Mr. Abderahman Seid was detained on 13 September 1988 and subsequently released on 14 September 1988. In Somalia, Mr. Nurradin Jeylan had been detained on 3 July 1988 and subsequently released on 30 July 1988. In Afghanistan, UNDP reported that the body of Mr. Bismillah Karnkai had been released to his family in 1979. Mr. Mubarak Shah was detained on 27 July 1983 and released on 10 August 1985. In Ethiopia, Mr. Ahmed Taitu, who had been detained on 20 May 1988, had subsequently been released on bail on 13 July 1989.

United Nations Industrial Development Organization

92. UNIDO informed the Special Rapporteur that nothing could be added to what was already known at United Nations Headquarters before UNIDO became a specialized agency concerning the case of Mr. Konrad Schultz (Federal Republic of Germany), who was killed in Guatemala in 1982, while travelling on private business from his duty station in San Salvador.

United Nations Relief and Works Agency for Palestine Refugees in the Near East

93. The information which the Special Rapporteur subsequently received from UNRWA stated that since the report of the Secretary-General six persons arrested in the Gaza Strip had been released by the Israeli authorities in

addition to another 12 who did not figure on the trial of the Secretary-General. With respect to the West Bank, UNRWA reported that 11 persons had been arrested and subsequently released, one of whom was mentioned in the report of the Secretary-General. One case of arrest and release was reported in Lebanon by militia or unknown elements. In addition, UNRWA submitted 36 new cases of people arrested between 3 December 1989 and 10 May 1990 (12 in the West Bank and 24 in the Gaza Strip).

94. The detailed reply by UNRWA furthermore reported on the case of Mr. Zeidan Sulaman Yassin, a locally recruited staff member who was listed in last year's report as detained in Lebanon by Syrian armed forces since 27 May 1987. The Secretary-General reported that Mr. Yassin had died in prison in Damascus on 17 December 1988, but UNRWA added that a medical report by the prison physician indicated that a kidney problem caused the death. UNRWA formally advised that Mr. Sa'di Mohammed Zeidan, listed under those detained in the Syrian Arab Republic had passed away on 7 July 1987 while in detention and after two operations had been performed on him in a government hospital. In this connection, the Agency had addressed a note verbale to the Syrian Government on 9 November 1987, to which the Agency thus far had received no response.

95. UNRWA also cleared the uncertainty which existed about the fate of Mr. Evner Ergun, who was assassinated on 19 November 1984. It states that he was not a staff member of UNRWA, but of the United Nations. In addition, it stated that the fate of Mr. Alec Collett, listed under those detained in Lebanon by unknown elements, had yet to be determined. He had been detained on 25 March 1985.

96. In general terms, UNRWA had been accorded access from time to time to staff in detention in the occupied territory of the West Bank and Gaza Strip, but it added that it had not had similar access to staff in detention in its other fields of operation. Moreover, UNRWA reported that it had not succeeded in obtaining adequate and timely information on the reasons for the arrest and detention of its staff.

Staff associations

97. The Geneva staff association of the World Health Organization submitted to the Special Rapporteur a calendar of events in the Viviana Micucci case, considered still pending, as the whereabouts of Mrs. Micucci could never be determined since her abduction from her house in Buenos Aires on 11 November 1976.

98. The Special Rapporteur was provided with a detailed description of the arrest of Mrs. Ghennet Mebrahtu in Addis Ababa, a case already reported by the Economic Commission for Africa to the Secretary-General last year.

99. On 8 June 1989, she was officer-in-charge, acting for the Head of the WHO/EPR centre who was absent from Addis Ababa on a duty travel to Alexandria. Ethiopian security officers called and requested her to come to her house for an immediate talk and she left the office before the chief of office returned. Upon his arrival, the chief of office called her home since she was not back. She was not in any more; he asked to talk with the WHO driver, but he had left already. The chief subsequently informed the WHO representative in Ethiopia by telephone and the regional office and

headquarters by telex. He also immediately asked news from the Head of Protocol in the Ministry of Foreign Affairs. A note verbale was delivered the same day to the Ministry of Foreign Affairs and her chief requested to see her immediately, in order to know if she had been arrested. In reply, he was given an appointment at the Ministry of Foreign Affairs the day after, 10 June at 8.00 a.m.

100. The chief insisted on seeing her and was authorized to see her in the parking lot of the Ministry, where she was waiting in a non-official car. On behalf of WHO and on his own, the chief promised Mrs. Ghennet all possible help to obtain her release as soon as possible. Since then, the WHO representative and the UN-ECA Secretariat, which is the leading agency for security affairs in Ethiopia, repeatedly requested a medical visit which was granted on 26 September 1989. During all these months, the WHO/EPR centre has continued to pay her salary, to visit her daughters regularly, to keep monthly contacts with the family, to insist verbally for a regular medical visit (without success), and to inform WHO headquarters of developments. Since her arrest, no charge has been brought against Mrs. Mebrahtu.

101. Amnesty International, in an "Urgent Action" communication, dated 8 June 1990, expressed its concern about the fate of Mrs. Mebrahtu.

B. Characterization of types of violations of human rights

102. The Special Rapporteur, having perused the information made available to her, concludes that most of the cases reported concern violations of human rights caused by the arrest and detention of staff members. Such violations run counter to accepted norms of international human rights law.

103. A corollary to the determination of a human rights violation is the determination whether or not a staff member has been arrested or detained because of his/her official activities. Those legal considerations should derive from the relevant international instruments on privileges and immunities and such a determination has to be made by the organization concerned. If the organization determined on the basis of visits to the detained or arrested staff members that the arrest or detention was related to official functions, then immunity was asserted. If, however, the visiting officials had learned, both from an interview with the detainee and from the charges brought, that the matter was not related to official functions, there was no legal basis for asserting immunity and the legal as distinct from the humanitarian grounds for further interventions by the organization no longer existed. However, the Special Rapporteur has to recognize that such a determination is sometimes very difficult to invoke, because, as the reply from FAO indicated "attempts by the Organization to ensure the security of its staff members have often been impeded by Governments' reticence to inform on their whereabouts and to allow access to them in their place of detention". Moreover, FAO reported that in several instances the information they had was too sparse to make an assessment on whether human rights had been respected. In addition, FAO stated that most incidents reported concerned locally-recruited nationals of the countries in question, assigned to General Service positions, who have been arrested and detained or expelled from their home country.

104. The Special Rapporteur would like to point out, in this connection, that it is her firm conviction that staff, whether locally or internationally recruited, should be treated with humanitarian considerations in mind when they are detained or arrested. The Special Rapporteur therefore appreciates the efforts of the Secretary-General and the executive heads of the different organizations concerned to ensure that any staff member who is arrested and detained will be treated fairly, and if necessary, properly charged and promptly brought to trial.

105. The Special Rapporteur expresses her grave concern about information submitted by the United Nations Truce Supervision Organization (UNTSO) for inclusion in the Secretary-General's report. According to UNTSO, children of local Palestinian staff members had been arrested for breaches of the peace under Israeli security legislation, which gave the army and the police wide powers of arrest and detention. Typically, they were held incommunicado for one or two weeks during which time the family was unable to find out where they were. Often the Israeli authorities declined to specify what were the circumstances of arrest and what charges would be brought. In some cases, children were released after a few weeks. In other cases, they were continually before a judge and remanded to prison for extended periods before being brought to trial and convicted of some breach of the peace under the security regulations. In one instance, the son of a local staff member of UNTSO had been remanded for a period of nearly six months before being convicted of stone-throwing and sentenced to imprisonment. 51/ The Special Rapporteur therefore deeply regrets that the bulk of the cases reported are still concentrated in a highly vulnerable and sensitive region in the Middle East where a large number of locally recruited officials are employed by several United Nations and other affiliated organizations.

III. CONSEQUENCES

106. With regard to the repercussions of the violations on the functioning of the organization, FAO observed last year that, on the one hand, such violations could be viewed as a direct attack against the organization itself. On the other hand, the number of violations has been limited and has not affected significantly the work of the Organization. 52/ Nevertheless, the Organization this year stated that in dealing with such problems it preferred to take a flexible approach and to determine its action in view of the particular circumstances of each case. However, FAO admitted that every violation certainly represents a potential obstacle to productive work and to constructive relations with the host country and government. This could lead to a very critical situation, in which a number of agencies with ongoing programmes in the country agree to suspend operations or to delay or cancel missions there.

107. A decision to that effect was already proposed by the Administrative Committee on Co-ordination in 1987 when it recommended the insertion of a new paragraph in the Security Handbook reading: "In the event that a case of arrest or detention of an official of an organization of the United Nations system constitutes a clear violation of the privileges and immunities of the official concerned and, at the same time, the employing organization has not been able to fulfil its obligations towards the official, the heads of organizations with programmes in the country concerned shall be requested by the Secretary-General of the United Nations to suspend all operations, other than those of a purely humanitarian nature, and to cancel future missions until this situation is resolved." 53/

108. The Special Rapporteur recognizes that violations of human rights by a government also severely jeopardize the situation of close relations of detained staff members and, if a staff member's contract expires, while in detention, it might even lead to a direct attack on the physical safety of the staff member concerned.

109. The Special Rapporteur agrees with the position taken by the Staff Association at United Nations Headquarters to the effect that the contractual status of the staff member should be continued automatically, regardless of type or length of contract and that financial and other assistance should be provided to the family of the staff member. 54/

IV. RECOMMENDATIONS

110. The Special Rapporteur firmly believes that a more open information campaign is one effective means to combat this abhorrent practice which runs counter not only to the lofty principles contained in the Charter of the United Nations and the subsequently concluded relevant agreements between States and organizations, but also brings international co-operation into jeopardy. Respect for the rights of international civil servants could perfectly tie in with the World Campaign on Human Rights, recently launched by the General Assembly. United Nations Headquarters and other duty stations shall publish lists of arrested, detained and missing staff members and should appeal to the conscience of Governments in countries where those practices occur.

111. FAO recommended that each organization should be provided with regularly updated information on the status of the various regional and global human rights instruments. This would enable organizations when intervening, to ensure the protection of their staff members, to invoke, where appropriate, relevant international obligations of the Governments concerned. This in turn would enhance the human rights protection of staff members.

112. A better co-ordinated and more detailed reporting system, including an active role on the part of the United Nations Security Co-ordinator to whom every case should be relayed without delay combined with a better dialogue between the Organization, and the host country may also contribute to a faster solution of cases.

113. In this connection, the Special Rapporteur reiterates her support given to the proposal by UNDP that Member States should agree that access by the designated official or his representative to detained staff should be granted within 24 hours of their arrest and that the Government formally explains the reasons for and the whereabouts of the arrest within 48 hours.

114. The Special Rapporteur also welcomes the proposed amended text of the term "designated official" in the United Nations Security Handbook as discussed by the Administrative Committee on Co-ordination. In view of its importance, the Special Rapporteur would like to quote an additional paragraph in the proposed amendment in full: "In certain circumstances, some organizations are called upon to work under hazardous circumstances, where decisions on the safety of their staff often allow an immediacy not encountered in other situations. In these situations, the organizations might be required to operate under a different régime from others. None the less, all country representatives must work in closest collaboration with the Designated Official and co-ordinate all action which might have an impact on the security and safety of staff". 55/

115. The Special Rapporteur agrees with the Administrative Committee on Co-ordination that invoking the new paragraph 117 of the Security Handbook as an ultimate remedy should be made on the advice of the Designated Official in the country concerned, through the UNDP Field Security Section and with the concurrence of the Security Co-ordinator and the Legal Counsel of the United Nations, who should consult, as appropriate, with the administration of the employing organization. 56/

116. Staff councils should continue to take action to support victims and their families and co-ordinate their action. The Special Rapporteur therefore welcomes the position taken by the Geneva Staff Association of the World Health Organization which proposed practical measures to improve the present system. It considered "the formalization and implementation" of operative paragraph 3 of Sub-Commission resolution 1989/30 a sine qua non. It was absolutely essential that medical teams be able to visit detained imprisoned staff members as this affords them more protection against mistreatment. The Staff Association considered the responsibility for these visits to be incumbent on the Joint Medical Service - analogous to their responsibility for all periodic examinations of staff. However, such examinations should be made with a greatly increased frequency, preferably each month.

117. The Staff Association at United Nations Headquarters presented the Special Rapporteur with a detailed "chart" of action to be undertaken in case of violation of human rights of staff members. It contained the following information:

> "In order to increase the effectiveness of the work related to the security and independence of the international civil service it is absolutely crucial to be promptly and accurately informed of all issues related to any form of violation by governments or militia of human and legal rights of staff members. In all situations of arrest, detention, imprisonment or other abuses, the respective staff bodies of each duty station should be informed immediately of all actions taken, actions envisaged to ensure the best interest of the beleaguered staff member. Upon signing of contract a staff member should designate the person or persons to receive his/her salary or portion thereof in any situation of emergency. This designation should be updated in the annual status report."

118. With respect to arrest and detentions, it recommended:

> "Immediately when a staff member is detained without all legal and human rights being observed, the following steps must be taken as a high priority:
>
> (1) A report should be presented to the responsible officials of the country involved;
>
> (2) A monthly status report on all cases of human rights abuses by a country should be compiled;
>
> (3) Posts occupied by detained staff members should be filled only on an interim basis;
>
> (4) Copy of medical records to be sent to Headquarters."

119. It provided for special action in cases of abduction, disappearance and killing of staff members:

> "(1) Continuation of the salary to the person or persons designated regardless of the type or length of contract until there is a resolution of the case;

(2) Ensurance of employment and, if necessary, job training for the spouse;

(3) Educational support for the children."

120. Regarding medical visits, it observed:

"Since 1984 the New York Staff Union and other staff groups have recommended the establishment of a medical team to visit staff being held under any form of detention, in order to ascertain their overall health and provide any form of medical assistance required. An essential first step which could be immediately implemented is the maintenance of medical records at Headquarters with a view to assisting the staff member as soon as such an emergency occurs. During periods of internment, the mental and physical condition of prisoners are known to deteriorate rapidly.

It is therefore essential that such a medical team, directly accountable to the Secretary-General, be established in order to ascertain the conditions under which United Nations staff are being detained and to provide them with any assistance required."

121. Finally, the Special Rapporteur wishes to express her satisfaction with the Advisory Opinion in the Mazilu case by the International Court of Justice. The opinion by the International Court of Justice will, in her opinion, surely contribute to the independence of the work of the Sub-Commission and its experts.

122. She is grateful for the support of and contribution by the Federation of International Civil Servants Association and the Association for the Security and Independence of International Civil Servants, and looks forward to continue to co-operate with them in the preparation of her final report.

Notes

1/ ST/SGB/198 of 10 December 1982, paras. 4-6.

2/ ST/SGB/198 of 10 December 1982, paras. 4-6.

3/ ST/AI/299, para. 4.

4/ International Labour Office Circular No. 314 of 6 November 1984.

5/ A/C.5/36/31, A/C.5/37/34, A/C.5/38/17, A/C.5/39/17, A/C.5/40/25, A/C.5/41/12, A/C.5/42/14, A/C.5/43/18, A/C.5/44/11.

6/ A/C.5/38/17, Annex I, p. 25.

7/ A/C.5/38/17, ibid., p. 27.

8/ A/C.5/38/17, ibid., p. 26, paras. 5, 6 and 7.

9/ A/C.5/38/17, Annex I, p. 25, para. 2.

10/ A/C.5/41/SR.27, para. 8.

11/ Contained in "Ad hoc Inter-Agency Meeting on Security Matters, WHO, Geneva, 20-31 July 1987, CRP.12 "Preservation of Contractual Rights of Staff Members who have been detained, arrested or imprisoned", see also Report of the Ad Hoc Inter-Agency Meeting on Security Matters (ACC/1987/13).

12/ A/C.5/43/SR.30, para. 33.

13/ A/C.5/43/18, paras. 35-37.

14/ JJC/Geneva/3602 of 15 September 1989.

15/ SG/SM/4387, HRD 144 of 12 December 1989.

16/ A/C.5/43/18, para. 40.

17/ A/C.5/43/SR.50, para. 8.

18/ A/C.5/44/SR.37, para. 3.

19/ International Court of Justice Reports, 1949, p. 174.

20/ International Court of Justice, Ibid., pp. 183-184.

21/ United Nations, Treaty Series, Vol. 596, p. 26.

22/ "Rights of the United Nations to visit and converse with staff members in custody and detention", Opinion Nr. 23, dated 10 July 1963, United Nations Juridicial Yearbook 1963, p. 191, para. 3.

23/ Ibid.

24/ Legal opinion by the United Nations Office of Legal Affairs written at the request of the Director-General, United Nations Office, Geneva, dated 23 August 1988, paras. 13-14.

25/ International Court of Justice, Request for Advisory Opinion, transmitted to the Court pursuant to Economic and Social Council resolution 1989/75 of 24 May 1989, dated 1 June 1989.

26/ Ibid., pp. 197-198, paras. 55 and 61.

27/ United Nations, Treaty Series, Vol. 33, p. 261.

28/ United Nations, Treaty Series, Vol. 1, p. 16.

29/ United Nations, Treaty Series, Vol. 11, p. 12.

30/ United Nations, Treaty Series, Vol. 1, p. 164

31/ United Nations, Treaty Series, Vol. 120, p. 270.

32/ United Nations, Treaty Series, Vol. 314, p. 49.

33/ United Nations, Treaty Series, Vol. 260, p. 35.

34/ United Nations, Treaty Series, Vol. 339, p. 111.

35/ United Nations, Treaty Series, Vol. 600, p. 93.

36/ United Nations, Treaty Series, Registration No. 19884, UN Juridical Yearbook, 1981, p. 11.

37/ United Nations, Treaty Series Vol. 1144, p.213.

38/ ST/LEG/4, pp. 9-11, United Nations, New York, 1953.

39/ Economic Commission for Latin America, Art. VII, Section 17 (f), Economic Commission for Africa, Art. VI, Section 11 (b), The Agreement between the Hashemite Kingdom of Jordan and UNRWA contains the clause that all internationally recruited members of the Agency shall be accorded the privileges and immunities under the United Nations Convention (art. 1)

40/ Repertory of Practice of United Nations Organs, Suppl. No. 5, Vol. V, Art. 92-111 of the Charter, United Nations, New York, 1986, para. 56.

41/ The responses are contained in Annex I of the present report.

42/ Ad Hoc Inter-Agency Meeting on Security Matters, World Health Organization, Geneva, 30-31 July 1987. "Arrest and Detention: Review of Reporting Procedures".

43/ Circular No. 314 "Sécurité, sûreté et indépendance des fonctionnaires de l'OIT", dated 6 November 1984; see footnote 4 above.

44/ A/C.5/44/11

45/ A/C.5/44/21.

46/ E/CN.4/1989/19, para. 18; E/CN.4/Sub.2/1989/28 and Annex I, p. 22.

47/ The responses which the Special Rapporteur received are available for consultation in the Secretariat.

48/ See E/CN.4/Sub.2/1989/28, Annex I, p. 20.

49/ Para. 97 above; E/CN.4/Sub.2/1989/28, Annex I, p. 22.

50/ /ICEF/1990/CRP.31, p. 5.

51/ A/C.5/44/11, Annex II, sect. D.

52/ E/CN.4/Sub.2/1989/28, para. 48.

53/ ACC decision 1987/20, see ACC/1987/Dec.16/27.

54/ Staff Management Co-ordination Committee, Staff position paper on The Security and Independence of the International Civil Service, February/March 1990.

55/ ACC/1987/13, p. 10, Annex III.

56/ Ad Hoc Inter-Agency Meeting on Security Matters, Conference Room Paper 4, "Arrest and Detention", Co-ordination of Action, July 1987.

ANNEX I

Procedures for reporting cases of arrest and detention

By letter of 3 November 1981, the United Nations Security Co-ordinator for the Secretary-General sought the advice of organizations and specialized agencies on the arrangements for reporting on arrest and detention.

The responses from those canvassed are summarized below:

ECLAC	Wishes to follow the standing United Nations procedure.
FAO	To follow its own procedure; reports of arrest and detention to be made to the Director-General, whether by an FAO official or a Designated Official who would automatically inform the United Nations Security Co-ordinator.
IBRD	To follow own arrangements in the future. In the meantime Heads of Bank's field offices to deal directly with local authorities in consultation with Designated Official and communicate directly with the Bank. In countries where Bank is not represented, the Designated Official to follow United Nations procedure but the Bank's Security Co-ordinator to be informed.
ICAO	Wishes to follow standing United Nations procedure.
ILO	To follow its own procedure and to inform the Designated Official promptly.
IMF	To follow standing United Nations procedure, but would also make independent contact with the Governor of the Fund for the member country (Finance Minister of Central Bank Governor).
IMO	Wishes to follow standing United Nations procedure.
ITU	Wishes cases to be dealt with Designated Official in accordance with United Nations procedure.
UNDP	To follow its own procedure.
UNDRO	Wishes cases to be dealt with by the Designated Official and requests that Co-ordinator in Geneva be informed concurrently.
UNESCO	Wishes to follow standing United Nations procedure.
UNHCR	Wishes to follow standing United Nations procedure except where a UNHCR representative is stationed, in which case the standing procedure should be applied in consultation and co-ordination with the said UNHCR representative.

UNRWA	To follow its own existing procedures.
UPU	Does not have its own arrangements and has no comment.
WHO	Wishes to follow standing United Nations procedure.
WIPO	Wishes to follow standing United Nations procedure
WMO	Wishes to follow standing United Nations procedure.

ANNEX II

List of staff members, victims of violations of human rights and of their professional status submitted by the Association for the Security and Independence of International Civil Servants

N°	SURNAMES	FIRST NAMES	INSTIT	SITUATIONS	AS FROM	SOURCES
		AFGHANISTAN				
001	SHAH	Tawakal	UNICEF	DECEASED 7)	87-05-00	CFN
002	AFGHAN	Mir	UNICEF	RELEASED 2)	87-02-08	CFN
003	MOHAMMED	Taj	UNICEF	RELEASED 2)	87-07-10	CFN
004	SABRI	Ghaisuddin	UNICEF	RELEASED 2)	86-01-00	CN
005	ZAMAN	Mir	UNICEF	RELEASED 2)	87-02-08	CFN
006	HAIRAN	Salleem	FAO	RELEASED 4)	88-01-27	BCH
007	OMAR	Mohammed	FAO	RELEASED 4)	89-05-17	BC
008	KAMKAI	Bismillah	UNDP	DECEASED 7)	79-05-05	CJP
009	KHALIL	Mohammed	UNESCO	RELEASED 2)	00-00-00	GJ
010	NOORUDDIN		FAO	RELEASED 1)	85-07-10	G
011	SHAH	Mubarak	UNDP	RELEASED 1)	85-08-10	G
012	MIR	Daulat	FAO	RELEASED 4)	86-11-18	BCG
		ARGENTINA				
013	MICUCCI	Viviana (Miss)	WHO	MISSING	76-11-11	C
		CHAD				
014	MBAINATHAN	Betel	UNDP	RELEASED 1)	88-09-03	BCP
015	SEID	Abderahman	UNDP	RELEASED 1)	88-09-14	BCP
		CHILE				
016	OLIVARES-MORI	Fernando	ECLAC	EXECUTED	73-10-06	C
017	SORIA-ESPINOSA	Carmelo	ECLAC	EXECUTED	76-07-14	C
		ETHIOPIA				
018	BELAY	Melake	ECA	ABDUCTED 6)	78-10-15	C
019	TESFAMARIAM	Zeggae	ECA	DETAINED	82-03-02	BC
020	MEBRAHTU	Ghenet (Mrs.)	WHO	DETAINED	89-06-08	BC
021	AHMED	Taitu (Mrs.)	UNDP	RELEASED 3)	89-07-13	BCP
		GUATEMALA				
022	SCHULTZ	Konrad	UNIDO	EXECUTED	82-05-00	C

N°	SURNAMES	FIRST NAMES	INSTIT	SITUATIONS	AS FROM	SOURCES
		ISRAELI AUTHORITIES IN GAZA STRIP				
023	MARWAN	Izzat Qassem Ali	UNRWA	DETAINED	88-01-25	ABC
024	EL KURD	Ibrahim Fawzi	UNRWA	DETAINED	88-04-27	ABC
025	ABU NAR	Husain Ibrahim	UNRWA	DETAINED	88-08-15	ABC
026	DUKHAN	Fattah Hasan	UNRWA	DETAINED	88-09-18	ABC
027	SALHA	Fayez Nour	UNRWA	DETAINED	88-11-21	ABC
028	DAHALAN	Ramadan Tawfiq	UNRWA	DETAINED	89-01-24	ABC
029	MALIHA	Anwar Khalil	UNRWA	DETAINED	89-02-02	ABC
030	ABU EL AUF	Majed Mohammad	UNRWA	DETAINED	89-02-26	ABC
031	ABU AUDA	Ziyad Abed	UNRWA	DETAINED	89-03-12	ABC
032	EL SAWALHI	Nabil Ibrahim	UNRWA	DETAINED	89-05-18	ABC
033	ABU SHANAB	Ismail Hasan	UNRWA	DETAINED	89-05-30	ABC
034	MUZAYYEN	Hasan Ibrahim	UNRWA	DETAINED	89-05-31	ABC
035	ABU SAIF	Awni Mohammad	UNRWA	DETAINED	89-05-31	ABC
036	EL MASAWABI	Munir Mohammad	UNRWA	DETAINED	89-05-31	ABC
037	NOUFAL	Mohammad Ibrahim	UNRWA	DETAINED	89-06-03	ABC
038	AL BARAWI	Anwar Ali	UNRWA	DETAINED	89-06-21	ABC
039	ABU ZAYEDA	Mahmoud Ahmad	UNRWA	DETAINED	89-07-31	A
040	AWWAD	Nawwaf Jamil	UNRWA	DETAINED	89-08-01	A
041	EL SAIQALI	Ibrahim Saleh	UNRWA	DETAINED	89-08-01	A
042	EL MUDALLAL	Dawoud Sulaiman	UNRWA	DETAINED	89-08-02	A
043	ABU ZUBAIDA	Jamal Abdala	UNRWA	DETAINED	89-08-03	A
044	DARWISH	Ali Saleh	UNRWA	DETAINED	89-08-07	A
045	ABU EL KAS	Mohammad A.Rabbu	UNRWA	DETAINED	89-08-17	A
046	LUBBAD	Hasan Mahmoud	UNRWA	DETAINED	89-09-03	A
047	EL SLAIBI	A.Rahman Nayef	UNRWA	DETAINED	89-09-10	A
048	ABU AQL	Salman Ahmad	UNRWA	DETAINED	89-09-12	A
049	EL AILA	Said Mahmoud	UNRWA	DETAINED	89-09-25	A
050	AYYASH	Abdalla Mahmoud	UNRWA	DETAINED	89-11-13	A
051	MATAR	Khaled A.Rahman	UNRWA	DETAINED	89-11-21	A
052	ULAYYAN	Jamil Yusuf	UNRWA	DETAINED	89-12-03	A
053	BARAKAT	Jalal Diab	UNRWA	DETAINED	89-12-05	A
054	HUMAID	Mahmoud Hasan	UNRWA	DETAINED	89-12-12	A
055	ABU SAFIYA	Shawkat A/Rahman	UNRWA	DETAINED	89-12-17	A
056	ABU HABEL	Jamal A/Naser	UNRWA	DETAINED	89-12-18	A
057	EL SHARIF	Hafez Mahmoud	UNRWA	DETAINED	89-12-18	A
058	ABU QAMAR	Fathi Samih	UNRWA	DETAINED	90-01-09	A
059	HASSOUNA	Mohammad Abbas	UNRWA	DETAINED	90-01-17	A
060	ABU HADI	Salem Sulaiman	UNRWA	DETAINED	90-01-22	A
061	AWAD	Hasan Juma	UNRWA	DETAINED	90-01-22	A
062	ABU AUKAL	Imad Mohammad	UNRWA	DETAINED	90-01-23	A
063	EL JAISH	Hatem Roubin	UNRWA	DETAINED	90-02-14	A
064	EID	Taysir A/Fattah	UNRWA	DETAINED	90-02-26	A
065	EL SHARIF	Muhammed Musa	UNRWA	DETAINED	90-03-09	A
066	ABU AJWEH	Musad Said	UNRWA	DETAINED	90-03-11	A
067	EL MADHOUN	Numan Ali	UNRWA	DETAINED	90-03-12	L
068	EL HASHEEM	Suhail Said	UNRWA	DETAINED	90-03-30	L
069	EL MADHOUN	Jamal Darwish	UNRWA	DETAINED	90-04-08	L
070	EL FADI	Basem Yusuf	UNRWA	DETAINED	90-04-21	L
071	MIQDAD	Jamal Mohammad	UNRWA	DETAINED	90-05-02	L
072	MATAR	Riyad A/Rahman	UNRWA	DETAINED	90-05-03	L
073	KHATIB	Mohammad	UNRWA	DETAINED	90-05-07	L
074	ABU SHAWISH	Fares Umar	UNRWA	DETAINED	90-05-08	L
075	ABU SHAWISH	Ziyad Ahmad	UNRWA	DETAINED	90-05-09	L

N°	SURNAMES	FIRST NAMES	INSTIT	SITUATIONS	AS FROM	SOURCES
076	SALMAN	Ahmad Uthman	UNRWA	DETAINED	90-05-09	L
077	ABU AUN	Abed Rabbu Husein	UNRWA	RELEASED 1)	90-04-05	AL
078	BSEISO	Muammar Ahmad	UNRWA	RELEASED 1)	90-05-01	AL
		ISRAELI AUTHORITIES IN LEBANON				
079	SHABAN	Yassin Y.	UNIFIL	RELEASED 1)	00-00-00	C
		ISRAELI AUTHORITIES IN WEST BANK				
080	SHABAN	Yousef Ismail	UNRWA	DETAINED	88-08-08	ABC
081	HUDEIB	Marwan Ismail	UNRWA	DETAINED	88-12-21	ABC
082	ODEH	Ahmad Fares	UNRWA	DETAINED	89-06-26	AC
083	LAHLOUH	Mohammad Ahmad Ania	UNRWA	DETAINED	89-08-21	A
084	AL BAYED	Mohammad Khalil Yousef	UNRWA	DETAINED	89-09-06	A
085	HATOU	Khamis Hamdi	UNRWA	DETAINED	89-10-03	A
086	RAED ZUHEIR	Shaban Yusuf Ali	UNRWA	DETAINED	89-12-04	A
087	IBREQUE	Ahmad Mansour Ibrahim	UNRWA	DETAINED	90-01-09	A
088	DUKMAQ	Akram Saddi	UNRWA	DETAINED	90-01-16	A
089	JIRMI	Mazen Jamil Mohammad	UNRWA	DETAINED	90-02-25	A
090	TOUMALIEH	Harbi Mohammad	UNRWA	DETAINED	90-02-27	A
091	KRUNZ	Ali Yousef	UNRWA	DETAINED	90-03-03	A
092	SEIFI	Khaled Ali Othman	UNRWA	DETAINED	90-03-05	A
093	ABU LIBDEH	Imad Arafat Juma	UNRWA	DETAINED	90-03-07	A
094	ABU AIAMIEH	Naser Hussein	UNRWA	DETAINED	90-03-09	A
095	MAZARAA	Niaz Farah Mohammad	UNRWA	DETAINED	90-03-13	A
096	BEYDOUN	Hani Ali Mohammad	UNRWA	DETAINED	90-03-20	L
097	MTEIR	Ahmad Ramadan	UNRWA	DETAINED	90-03-24	L
098	JARRAR	Bassam Nihad Ibrahim	UNRWA	DETAINED	90-04-03	CL
099	YACOUB	Basima Farouq Odeh	UNRWA	DETAINED	90-05-09	L
100	HAMMASH	Adnan Mohammad Ahmad	UNRWA	DETAINED	90-05-10	L
101	ILAYYAN	Nariman Ribhi Rashid	UNRWA	DETAINED	90-05-10	L
102	KAZMUZ	Yasir	UNRWA	EXECUTED	90-03-28	K
103	ABU GHALIEH	Salman Khalil	UNRWA	RELEASED 1)	89-08-01	AL
		JORDAN				
104	MISLEH	Khalil Ahmad	UNRWA	DETAINED	89-07-07	A
		KENYA				
105	NWAISIJI	Boniface	UNESCO	EXECUTED	87-01-06	C
106	LONE	Salim	UN	5)	86-09-05	C
		LEBANON (SYRIAN ARMED FORCES)				
107	YASSIN	Zeidan Suleiman	UNRWA	DECEASED 7)	88-12-17	BCL
108	FREIJI	Fayyad Mohammad	UNRWA	DETAINED	86-11-27	ABC
109	ISHKUNTANA	Samir	UNRWA	DETAINED	87-04-07	ABC
110	AYOUB	Rifat	UNRWA	DETAINED	88-01-14	ABC
111	ARABI	Ahmad Juma	UNRWA	DETAINED	88-10-31	ABC
112	KANJ	Majed	UNRWA	DETAINED	89-02-27	ABC
113	HAMADEH	Zaki	UNRWA	MISSING	86-03-18	ABC
		LEBANON (MILITIAS OR UNKNOWN ELEMENTS)				
114	COLLETT	Alec	UNRWA	ABDUCTED 6)	85-03-25	ABC
115	MANSOUR	Izzat	UNRWA	DETAINED	89-09-25	A
116	BREIR	Nabila (Mrs.)	UNICEF	EXECUTED	86-12-18	CE
117	JAWAD	Abid	UNIFIL	EXECUTED	87-05-21	C
118	DARNISH	Jebreal Ibrahim	UNIFIL	EXECUTED	87-05-26	C

N°	SURNAMES	FIRST NAMES	INSTIT	SITUATIONS	AS FROM	SOURCES
119	HIGGINS	William	UNTSO	EXECUTED	89-07-31	BC
120	HLASS	Gena (Mrs.)	UNICEF	EXECUTED	89-12-06	E
121	AHMAD	Mahmoud Husein	UNRWA	MISSING	83-03-22	ABC
122	SABAH	Mohammad Ali	UNRWA	MISSING	83-03-22	ABC
123	EL HAJJ ALI	El-Mohammad Mustafa	UNRWA	MISSING	86-11-28	ABC
124	AL ARAJ	Nayef	UNRWA	MISSING	89-09-23	A
125	ZEIDAN	Said	UNRWA	RELEASED 1)	89-12-03	ACL
		MAURITANIA				
126	DIALLO	Abdul	UNDP	EXPELLED	88-05-18	C
127	DIALLO	Afton Ba	UNDP	EXPELLED	88-05-22	C
128	SAGNA	Moussa	UNDP	DETAINED	88-07-88	C
129	DIAW	Abdoulaye	FAO	EXPELLED	89-05-24	CR
130	POUYE	Ndiome	FAO	EXPELLED	89-05-02	CR
131	NIANG	Demba	FAO	EXPELLED	89-05-02	CR
132	DIENG	Amadou	FAO	EXPELLED	89-06-06	CR
133	BA	Mouhamedou	FAO	EXPELLED	89-06-12	CR
134	BA	Yassin (Mrs.)	FAO	EXPELLED	89-00-00	R
		PAKISTAN				
135	WADOOD	Abdul Fattah	WFP	MISSING	89-09-03	C
		SOMALIA				
136	JEYLAN	Nurradin	UNDP	RELEASED 1)	88-07-30	CP
137	ZAINAB	Aw Jama Adan (Mrs.)	WFP	MISSING	88-06-04	BC
		SUDAN (SOUTH)				
138	ARRIBAYA	Frazer	WFP	EXECUTED 2)	89-12-21	D
		SYRIAN ARAB REPUBLIC				
139	ZEIDAN	Sa'adi Mohammad	UNRWA	DECEASED 8)	87-07-07	CLM
140	HAYATLI	Abdalah Daker	UNRWA	MISSING	80-04-20	ABC
141	ABU KHREISH	Izzedine Hussein	UNRWA	DETAINED	80-09-11	ABC
142	SHIHABI	Ali Said	UNRWA	DETAINED	82-03-31	ABC
143	ISSA	Abdallah	UNRWA	DETAINED	85-10-06	ABC
144	KTEILEH	Fadel Mohammad	UNRWA	DETAINED	86-03-24	ABC
145	SALMAN	Kheir Fadel Mohammad	UNRWA	DETAINED	86-04-01	ABC
146	JALBOUT	Yaser Hassan	UNRWA	DETAINED	86-04-05	ABC
147	JAWABRI	Turfa (Mrs.)	FAO	RELEASED 2)	90-20-01	CR
148	IZZA	Sami	UNDOF	DETAINED	85-10-06	C
		ZAMBIA				
149	NYIRENDA	Abel	FAO	DECEASED 10)	89-04-29	CR
		OTHER				
150	EVNER	Ergun	UN	EXECUTED 9)	84-11-19	CL

Notes

(1) Staff association still awaiting confirmation of re-employment of the staff member by the Organization.

(2) Further clarification needed from the Organization.

(3) Mrs. Taitu Ahmed was released on bail, pending a new trial.

(4) Staff members having been "released" from gaol but forced to conscript into the government army. They never resumed their duties.

(5) The citizenship of Mr. Lone has been revoked on 6 September 1986.

(6) Believed dead.

(7) Died in prison.

(8) UNRWA was informally advised that Mr. S.M. Zeidan passed away while in detention and after two operations had been performed on him in a government hospital.

(9) Mr. Evner was assassinated in Vienna by unknown persons.

(10) Deceased as a consequence of ill treatment inflicted on him by the police.

REFERENCES (SOURCES):	DATES:
A = UNRWA List (fax No. 001.212.963.4879	23 March 1990
B = A/C.5/44/11	02 November 1989
C = A/C.5/44/21	03 November 1989
D = Tribune de Genève	21 December 1989
E = E/ICEF/1990/CRP 31	27 April 1990
F = A/C.5/43/27	31 October 1988
G = A/C.5/40/25	25 October 1985
H = A/C.5/43/18	07 November 1988
J = A/C.5/42/37	10 November 1987
K = Herald Tribune (NYT, Reuters)	29 March 1990
L = UNRWA communication	25 May 1990
M = A/C.5/42/14	19 October 1987
N = UNICEF communication	25 June 1990
P = UNDP communication	10 July 1990
R = FAO communication	20 July 1990

This is the list of staff currently detained, imprisoned, missing or executed in Member States of the Organization, as well as staff abducted by militia or other unknown elements. The list also includes some staff members

who have had their citizenship revoked or who have been forced to resign. It does not contain most of the names of hundreds of staff members whose most fundamental, human and legal rights have been violated, but have since been released from prison. Neither does it include all those who have been killed in conflict situations while in the service of the world community.

Staff continue to be included in this list until their rights, as well as those of the Organization, have been fully observed. Staff who have been murdered or illegally executed by governments are also retained on the list, as we continue to maintain that those responsible for violations of such magnitude must be held accountable.